This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

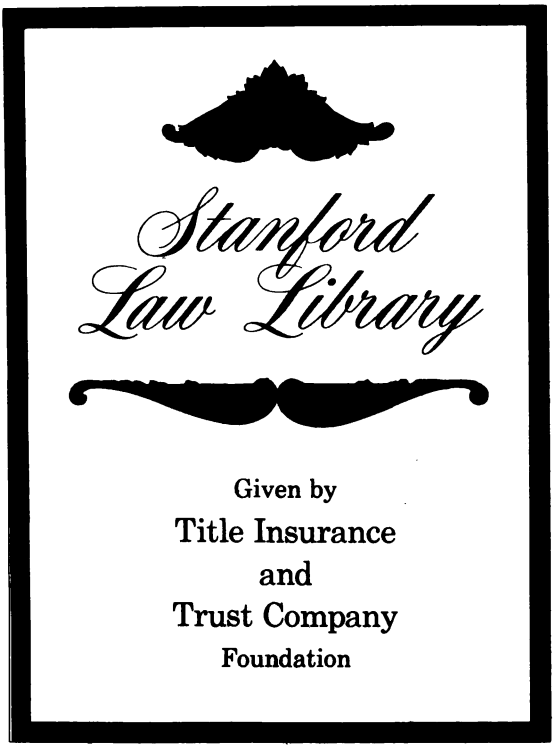
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Delapree Abbey


Stanford
Law Library
Given by
Title Insurance
and
Trust Company
Foundation

EP
APF
QJ t 2

STANFORD LAW LIBRARY

THE

LAW OF TYTHES,

UPON AN ORIGINAL AND PRACTICAL PLAN:

COMPRISING

The Statutes, Adjudged Cases, Resolutions, and Judgments, in Equity and the Ecclesiastical Courts.

Originally compiled

By JOHN PAUL, *Esquire.*

THE SECOND EDITION,

WITH AN

APPENDIX;

CONTAINING

A copious Abstract of the 43d Geo. 3. c. 84. relative to SPIRITUAL PERSONS HOLDING FARMS, and ENFORCING RESIDENCE on their Benefices:

TYTHE TABLES,

Calculated upon the most equitable Terms of Composition:

AND

A COMPREHENSIVE INDEX:

Constituting a PRACTICAL GUIDE to the

COUNTRY GENTLEMAN,	PARSON,
FARMER,	SOLICITOR, *&c. &c.*

BY JOHN IRVING MAXWELL,
Of the Hon. Society of the Inner Temple.

LONDON:
Printed by Rider & Weed, Little Britain,
FOR W. J. AND J. RICHARDSON; LACKINGTON, ALLEN AND CO.
H. D. SYMONDS; LONGMAN, HURST, REES,
AND ORME; AND T. OSTELL.

1807.

ADVERTISEMENT

TO THE FIRST EDITION.

THE following sheets are compiled for the particular use and service of the country gentleman, parson, farmer, and all others who are or may become interested in paying or collecting the different species of tythes as by law they are now settled and ascertained.

The Editor has entirely divested the present Treatise of those long, tedious, and declamatory arguments of the *counsel* and *civilians*, on the nature, class, and distinction of tythes, with which almost all other works on this subject are so uselessly enveloped. *Here* will be found the essence of *every thing* that has been *judicially* determined on this head, great part of which has hitherto lain dispersed and unnoticed in a variety of statutes, *equity* and *ecclesiastical* decrees and ordinations.

The tythe law has for ages past been a ground of constant litigation between individuals, sometimes to the total ruin of themselves, their families, and fortunes; and where this has not been the case, it has raised a spirit of dissension that never after could be entirely eradicated.

This

This work is offered as an humble attempt to remove that evil. It will be found to contain a more comprehensive, yet simple, and explicit definition of the law of tythes than in any book now extant, and in a style and manner suited to those who are not read in the law as well as those who are.

The article of *Agistment of Cattle* is here fully investigated, and finally determined, from a case in point lately decreed in the Court of *Exchequer*. No person can now possibly err in this branch of the tythe law, who will give themselves the trouble to peruse this pamphlet.

If the intelligence here given is found useful and satisfactory to those who have occasion to consult the subject for practical use, the Editor's wish and design is fully accomplished.

June 1, 1781.

PREFACE

TO THE SECOND EDITION.

THE compiler of this treatiſe has ſo judiciouſly, and perſpicuouſly, pointed out his objects in the original publication, that nothing more remains for the perſon, to whoſe charge the preſent edition has been confided, than ſimply to ſtate thoſe additions, which it has been thought neceſſary to introduce.

Adhering, ſtrictly, to the original plan of Mr. PAUL, who intended his publication more as a practical guide, to convey the moſt ready and accurate information upon ſubjects of more immediate intereſt, and daily occaſion, than to inveſtigate, whether the payment of tythes be a divine or a municipal obligation, or the more remote and abſtruſe doctrines of theology; no other additions have been here introduced, than thoſe, which have been conceived of practical importance to all parties intereſted on the ſubject.

In preparing, therefore, the preſent edition, the moſt recent publications have been conſulted, and the lateſt judicial deciſions incorporated. An Appendix has alſo been added, containing a copious Abſtract of the 43d Geo. 3. for amending the laws relative to ſpiritual perſons holding farms, and enforcing reſidence upon their benefices, which, it is preſumed, muſt be particularly intereſting to clergymen in general: to which has been

been added, a collection of Tythe Tables, alphabetically arranged, eſtimating the value of the different ſpecies of crops, and propoſing a general payment of a certain ſettled ſum for every acre, cropped or uncropped, throughout the ſeveral farms: a mode of compoſition of all others the moſt equitable, for adjuſting fairly the reſpective intereſts of the tytheholder and landholder.

This ſuggeſtion has been taken from Mr. Bearblock's excellent treatiſe on the Tythe Laws. How far the Legiſlature, in its wiſdom, may deem it prudent to ſimplify this branch of juriſprudence, as has been already done with reſpect to the Stamp Duties, the Parochial Syſtem, &c. and by eſtabliſhing general rules for payment of *certain* ſums, capable of univerſal application, is not for the writer of this to enquire; he feels himſelf, however, perfectly warranted in aſſerting, that ſuch regulations, when the *leſs* awful ſtate of the empire ſhall afford a proper opportunity for the experiment, would probably diminiſh thoſe ruinous litigations, which in but too many inſtances have produced ruin and inveterate animoſities, where proſperity, and the mutual amities of ſocial intercourſe, would otherwiſe have probably flouriſhed.

A copious Index has alſo been ſubſtituted for an imperfect table of contents, contained under that title, in the firſt edition; which, by preſenting a minute enumeration of the particular articles, will, at the ſame time, communicate readily and accurately the preciſe points of information required.

J. I. MAXWELL.

23, *Caſtle-ſtreet, Holborn,*
Jan. 1, 1807.

CONTENTS.

CHAP. I.

Of Parſons and Vicars—What they are—Qualifications neceſſary for thoſe Functions—How and by whom created—What is a temporary, and what a total Incapacity—Appropriations, what they are—Advowſons, what—Their different kinds, and how they operate—A Rectory or Parſonage explained—Of Vicarages and their Endowments - - - Page 1

CHAP. II.

Tythes, what they are.—Their general Operation and Names—How divided—What will alter the cuſtomary and uſual Diviſion of Tythes—To whom extraparochial Tythes belong—To whom Tythes are due in particular caſes - - - - - 7

CHAP. III.

Of Exemption from Payment of Tythes by Modus, Cuſtom, and Preſcription, &c. - - - 14

CHAP. IV.

Of Things tytheable and Things not tytheable - 25

CHAP. V.

The Manner of ſetting out, taking, and carrying away Tythes, as ſettled by the Common Statute and Eccleſiaſtical Law. - - - - 52

CHAP. VI.

The ſeveral Remedies to be taken for the recovering of Tythes by the Common Statute and Eccleſiaſtical Law 56

CHAP. VII.

What Leaſes Parſons, Vicars, and other Eccleſiaſtical Perſons may make of their Glebe, Tythes, Farms, &c. 79

CHAP. VIII.

The Manner of paying Tythes, together with the Sums payable by the reſpective Pariſhes in London. - 96

CHAP.

CONTENTS.

CHAP. IX.

A Table of the ſeveral Monaſteries, Abbeys, &c. exempt from Tythes, being diſſolved by ſtat. 31 *Hen.* 8. 137

APPENDIX.

Abſtract of the 43*d Geo.* 3. *relative to Spiritual Perſons holding Farms, and for enforcing their Reſidence* 145

Tythe Tables, eſtimated according to the moſt equitable Terms of Compoſition - - 170

NEW EDITIONS

(Brought down to the preſent Time) of the following Works,

By the late JOHN PAUL, Eſq. Barriſter at Law.

Lately Publiſhed, Price 5s. ſewed,

A DIGEST of the BANKRUPT LAWS; or, Debtor and Creditor's Compendium; being a perſpicuous Arrangement and familiar Explanation of all the *Laws, Deciſions,* and *Proceedings,* under a *Commiſſion of Bankrupt,* from the *Act of Bankruptcy* to the *final* Allowance of the *Certificate.* With an Appendix of Precedents, Bills of Coſts, a copious Index, &c. &c. The Second Edition, with conſiderable Additions and Corrections. By JOHN IRVINE MAXWELL, of the Hon. Society of the Inner Temple, &c.

Printed for W. J. and J. Richardſon; Lackington, Allen, and Co.; H. D. Symonds; Longman, Hurſt, Rees, and Orme; and T. Oſtell.

Of whom may be had, the Ninth Edition, Price 3s. ſewed.

THE LAWS relative to LANDLORDS, TENANTS, and LODGERS; or Every LANDLORD and TENANT HIS OWN LAWYER. Compriſing, Agreements—Aſſignments—Double Rent—Diſtreſs—Ejectment Lodgings—Mortgages—Notices—Fixtures—Rent—Repairs—Waſte, &c. With ſelect Precedents for letting Houſes, Lands, Apartments, and other uſeful Deeds; Tables of Coſts, Stamps, &c.

Sixth Edition. Price 3s. 6d. ſewed.

THE PARISH OFFICER'S COMPLETE GUIDE: compriſing the Laws relative to the reſpective Duties of Churchwardens, Overſeers, Conſtables, Surveyors of Highways, &c. &c. including all the Acts of Parliament and Adjudged Caſes regulating the Poor Rates, Pariſh Settlements, Certificates, Apprentices, Repairs of Highways, &c. &c.

Fourth Edition. Price 3s. ſewed,

A DIGEST of the GAME LAWS: compriſing all the Statutes now in Force, relative to Foreſts—Deer—Hares—Rabbits—Partridges—Pheaſants—Red Game—Black Game—Pigeons—Dogs—Sea Fiſh—River Fiſh, &c. Regulations for Game-keepers, Certificates, &c. &c.

N. B. In giving Orders for the above Works, be particular in ſaying thoſe by JOHN PAUL, Eſq.

THE

LAW OF TYTHES.

CHAP. I.

Of Parſons and Vicars.—Qualifications neceſſary for theſe Functions.—How and by whom created.—What is a temporary, and what a total Incapacity.—Of Appropriations.—Of Advowſons.—Their different Kinds, and Mode of Operation.—A Rectory or Parſonage explained.—Of Vicarages, and their Endowments.

A PARSON, i.e. *perſona eccleſiæ*, is one that hath full poſſeſſion of all the rights of a *parochial* church. He is ſo called, becauſe *in his perſon* the church, which is an inviſible body, is repreſented. He has, during his life, the freehold in himſelf of the *parſonage-houſe*, *the glebe*, *the tythes*, and *other dues*. At the firſt eſtabliſhment of *parochial* clergy, tythes were divided into *four* parts, as follow:

A parſon, what he is. Co. Litt. 300.

1. For the uſe of the biſhop.
2. For the maintaining the fabric of the church.
3. For the poor.
4. For the incumbent.

Biſhops having ſince been otherwiſe amply provided for, they are now prohibited from demanding their uſual ſhare of tythes.

Glebe tythes, &c. are ſometimes *appropriated*, that is, the benefice is perpetually annexed to ſome ſpiritual corporation, either *ſole* or *aggregate*, being the patron of the living,

An appropriation, what conſtitutes the ſame. Plowd. 496, 500. Hob. 307.

living, whom the law eſteems equally capable of providing for the ſervice of the church as any ſingle private clergyman. In order to complete an *appropriation*, the King's licenſe, and conſent of the Biſhop, muſt be firſt obtained, becauſe they, at ſome time or other, may have an intereſt by *lapſe* in the preſentation to the benefice, which cannot happen if it be appropriated to the uſe of a corporation, which never dies. The conſent of the patron is, in this caſe, neceſſarily implied, becauſe the appropriation can be originally made to none but to ſuch ſpiritual corporation as is patron of the church, the whole being a licenſe for the patrons to retain the *tythes* and *glebe* in their own hands, without preſenting any clerk, they undertaking to provide for the ſervice of the church. An appropriation ſo created, the appropriators and their ſucceſſors are perpetual parſons of the church, and muſt ſue, and be ſued, in all matters concerning the rights of the church, by the name of *parſons*.

Appropriations how ſevered. Co. Litt. 46.

Appropriations may be ſevered *two ways*, and the church become *diſappropriate*. The firſt is, if the patron or appropriator preſents a clerk who is inſtituted and inducted to the parſonage; for the perſon ſo inducted is to all intents and purpoſes *complete parſon*. Appropriations ſevered can never be re-united again, unleſs by a repetition of the ſame ſolemnities. The *clerk* ſo preſented is diſtinct from the *vicar*; the *rectory* thus veſted in him becomes what is called a *ſine cure*, becauſe he hath no cure of ſouls, having a vicar under him, to whom that cure is committed. If the corporation, which has the appropriation, is diſſolved, the parſonage becomes diſappropriate at *common law*, becauſe the perpetuity of perſon is gone, which is neceſſary to ſupport the appropriation.

Seld. Rev. of Tythe, c. 9. Spel. Apol. 35.

In this manner, and ſubject to theſe conditions, may appropriations be made at this day: and thus were moſt, if not all, of the appropriations at preſent exiſting, originally made; being annexed to biſhopricks, prebends, religious houſes, nay, even to nunneries, and certain military orders, all of which were ſpiritual corporations. At the diſſolution of monaſteries, by ſtatutes 27 *Hen.* 8. *c.* 28. and 31 *Hen.* 8. *c.* 13. the appropriations of the ſeveral parſonages, which belonged to thoſe reſpective religious houſes (amounting to more than *one-third* of all the pariſhes in England), would have been, by the rules of

of the *common law*, diſappropriated, had not a clauſe in thoſe ſtatutes intervened, to give them to the king in as ample a manner as the *abbots*, &c. formerly held the ſame at the time of their diſſolution.

Appropriating corporations, or religious houſes, uſed formerly to depute one of their own body to perform divine ſervice, and adminiſter the ſacraments in thoſe pariſhes of which the ſociety was *parſon*. This officiating miniſter was in reality no more than a *curate deputy*, or vicegerent of the appropriator, and called *vicarius*, or *vicar*. His ſtipend was at the diſcretion of the appropriator, who was, however, bound of *common right* to find ſomebody for that ſervice. This, however, was executed in ſo ſcandalous a manner, and the pariſhes ſuffered ſo much by the neglect of the appropriators, that the legiſlature was forced to interpoſe. It was accordingly enacted, by ſtatute 15 *Rich.* 2 *c.* 6. that in all appropriations of churches, "the dioceſan biſhop ſhall ordain "(in proportion to the value of the church), *a competent* "*ſum to be diſtributed among the poor pariſhioners annually*; "*and that the vicarage ſhall be ſufficiently endowed*" It ſeems, the pariſh were frequently ſufferers, not only by the want of divine ſervice, but alſo by withholding thoſe alms for which, among other purpoſes, the payment of *tythes* was originally impoſed; and, therefore, in this act a penſion is directed to be diſtributed among the poor *parochians*, as well as a ſufficient ſtipend to the *vicar*. He being liable to be removed at the pleaſure of the appropriator, was not likely to inſiſt too rigidly on the legal ſufficiency of the ſtipend. To remedy which, by ſtatute 4 *Hen.* 4. *c.* 12. "It was ordained, that the vicar ſhall "be a *ſecular* parſon, not a member of any religious "houſe; that he ſhall be vicar *perpetual*, not removeable "at the caprice of the monaſtery; and that he ſhall be "*canonically* inſtituted and inducted, and be *ſufficiently* "*endowed*, at the diſcretion of the ordinary, for theſe "three expreſs purpoſes, *to do divine ſervice, to inform* "*the people*, and *to keep hoſpitality*." The endowments made in conſequence of theſe ſtatutes, have uſually been by a portion of the *glebe*, or land, belonging to the parſonage, and a particular ſhare of the *tythes*, which the appropriators found it moſt troubleſome to collect, and which are therefore generally called *privy* or *ſmall tythes*; Seld. Tythes, c. 11. 1.

the greater, or *predial tythes*, being ſtill reſerved to their own uſe. This rule was not obſerved in the endowment of all vicarages. Some are more liberally, and ſome more ſcantily endowed; the *tythes* of many things, as *wood in particular*, are in ſome pariſhes *rectorial*, and in others, *vicarial tythes*.

Diſtinction between a parſon and vicar.

The diſtinction between a *parſon* and *vicar* is this, viz. The parſon has, for the moſt part, *the whole right* to all the *eccleſiaſtical dues* in his pariſh: a vicar has generally an appropriator over him, who is entitled to the beſt part of the profits, to whom he is, in effect, no more than *perpetual curate*, with a ſtanding ſalary. In ſome places, the vicarages have been conſiderably augmented by a large ſhare of the *great tythes*; which augmentations were greatly aided by ſtatute 29 *Car.* 2. *c.* 8. enacted in favour of *poor vicars* and *curates*, which rendered ſuch temporary augmentations (when made by the appropriators) perpetual.

To conſtitute a *parſon* or *vicar*, there are *four* requiſites neceſſary, viz. *holy orders*, *preſentation*, *inſtitution*, and *induction*. By the *common law*, a deacon, of any age, might be inſtituted and inducted to a *parſonage* or *vicarage*. But by 13 *Eliz. c.* 12. it was enacted, "that no "perſon under *twenty-three* years of age, and in deacon's "orders, ſhould be preſented to any benefice with cure; "and if he were not ordained prieſt *within one year* after "his induction, he ſhould be *ipſo facto* deprived." By ſtatute 13 and 14 *Car.* 2. *c.* 4. "No perſon is capable to "be admitted to any benefice, unleſs he hath been firſt "ordained a prieſt;" and then he is, in the language of the law, *a clerk in orders*. If he obtain orders, or a licenſe to preach, by money or corrupt practiſes, the perſon giving ſuch orders forfeits *forty pounds*; and the perſon receiving, *ten pounds*, and is incapable of any *eccleſiaſtical* preferment for *ſeven years* afterwards.

A clerk, how preſented.
Burn, v. 1. p. 103
2 Roll. Abr. P. 355, 356
St. 3 Rich. 2. c. 3.
7 Rich. 2. c. 12.
5 Rep. 58.
2 Inſt. 632.

A clerk may be preſented to a *parſonage* or *vicarage*; that is, the patron, to whom the advowſon of the church belongs, may offer his clerk to the biſhop of the dioceſe to be inſtituted. When a clerk is preſented, the biſhop may refuſe him on many accounts. Firſt, if the patron be *excommunicated*, and remain in contempt *forty days*. Secondly, if the clerk be unfit; which unfitneſs is of ſeveral kinds. Firſt, with regard to his perſon; as if he be

be a *baſtard*, an *outlaw*, an *excommunicate*, an *alien*, *under age*, or the like. Next, with regard to his *faith* or *morals*; as for any particular hereſy, or vice that is *malum in ſe*: but if the biſhop alledge only in *generals*, as that he is *ſchiſmaticus inveteratus*, or object a fault that is *malum prohibitum* merely, as haunting taverns, playing at unlawful games, or the like, it is not good cauſe of refuſal. Laſtly, the clerk may be unfit to diſcharge the *paſtoral* office for want of learning. In any of which caſes the biſhop may refuſe the clerk. In caſe the refuſal is for hereſy, ſchiſm, inability of learning, or other matter of *eccleſiaſtical* cognizance, *there* the biſhop muſt give notice to the patron of ſuch his cauſe of refuſal, who, being uſually a *layman*, is not ſuppoſed to have knowledge of it, elſe he cannot preſent by *lapſe*: but if the cauſe be *temporal*, he is not bound to give notice.

If an action at law be brought by the patron againſt the biſhop, for refuſing his clerk, the biſhop muſt aſſign the cauſe. If the cauſe be of a *temporal* nature, and the *fact admitted* (as, for inſtance, *outlawry*), the judges of the King's courts muſt determine its validity, or whether it be ſufficient cauſe of refuſal: but if the *fact be denied*, it muſt be determined by a jury. If the cauſe be of a *ſpiritual nature* (as hereſy particularly alledged), the fact, if denied, ſhall alſo be determined by a jury; and if the fact be admitted or found, the court, upon conſultation, and advice of learned divines, ſhall decide its ſufficiency. If the cauſe be want of learning, the biſhop need not ſpecify in what points the clerk is deficient, but only alledge that he is deficient; for ſtat. 9 *Edw.* 2. *ſt.* 1. *c.* 13. is expreſs, that the examination of the fitneſs of a perſon preſented to a benefice, belongs to the *eccleſiaſtical* judge; but becauſe it would be nugatory in this caſe to demand the reaſon of refuſal from the ordinary, if the patron were bound to abide by his determination, who has already pronounced his clerk unfit; therefore, if the biſhop returns his clerk to be *minus ſufficiens in literatura*, the court ſhall write to the *metropolitan* to re-examine him, and certify his qualifications; which certificate of the *archbiſhop* is final.

2 Inſt. 632. 5 Rep. 58. 3 Lev. 313.

On inſtitution, the clerk *may enter* on the *parſonage-houſe* and *glebe*, and take the *tythes*; but he cannot

Bl. Com. v. 200.

grant, or *let them*, or *bring an action* for them till *induction*.

The different kinds of advowſon. Co Litt. 119, 121, 307.

An ADVOWSON is the right of preſentation to a church or *eccleſiaſtical* benefice. There are three kinds of advowſons, viz. *preſentative*, *collative*, or *donative*; when *preſentative*, the patron hath a right of preſentation of a clerk, to the biſhop or ordinary, if *canonically* qualified; *collative* is where the biſhop and patron are one and the ſame perſon; *donative* is when the King, or any ſubject by his licenſe, doth found a church or chapel, and ordains that it ſhall be merely in the gift or diſpoſal of the patron, ſubject to his viſitation only, and not to that of the ordinary, and veſted abſolutely in the clerk by the patron's deed of donation, without preſentation, inſtitution, or induction. Theſe advowſons have all tythes annexed to them, and are uſually paid to the officiating miniſters, which before were given to the clergy in common.

A rectory or parſonage, what. Spel. v. Degge's Parſon's Counſellor, c. 13. p. 190.

A RECTORY or parſonage is a *ſpiritual living*, compoſed of *land*, *tythes*, and *other oblations* of the people, ſeparate, or dedicate to God, in any congregation, for the ſervice of his church there, and for the maintenance of the governor or miniſter thereof, to whoſe charge the ſame is committed.

Ibid.

A rectory or parſonage uſually conſiſts of *glebe land* and *tythes*, with the *offerings*, yet it may be a rectory, though it have *no glebe* but the church and church-yard: and in London, and other great towns and cities, there may neither be *glebe nor tythes*, but *annual payments and offerings in lieu thereof*.

Ibid.

By grant of rectory, all the glebe tythes and offerings paſs.

A vicarage, what. Degge, 191.

A VICARAGE is a cantel or portion of the rectory, ſet out by the patron, parſon, and ordinary, for the maintenance of a perpetual vicar; who, as vicegerent of the parſon, hath the cure of the ſouls within the pariſh where he is vicar. A vicarage may conſiſt of *land* or *tythes alone*, or of *glebe tythes*, *offerings*, or in *an annual penſion*, without glebe or tythes; and ſuch penſions have been limited by ſeveral canons.

Ibid.

Vicarages are in general endowed with glebe and tythes.

Ibid. 194.

Indowments of vicarages are always conſtrued in law favourably to the vicar, eſpecially where the cure of ſouls is annexed.

CHAP.

CHAP. II.

Tythes, what they are.—Their general Operation and Names.—How divided.—What will alter the cuſtomary and uſual Diviſion of Tythes.—To whom extraparochial Tythes belong.—To whom Tythes are due in particular Caſes.

Tythes, what they are. Blac. Com. v. 2. p. 24. Wood's Inſt. p. 161. 2 Rep. 411.

TYTHES, by the beſt law, and *eccleſiaſtical* authorities, are defined to be the *tenth* part of the *increaſe yearly ariſing*, and *renewing from the profits of lands*, *the ſtock upon lands*, and *the perſonal induſtry* of the inhabitants, payable towards the maintenance of a pariſh prieſt, by every perſon who hath any thing tytheable in the pariſh, unleſs he can ſhew ſome *ſpecial* exemption therefrom, as will be ſhewn hereafter. They are properly due to ſuch clergy as have the cure of ſouls in the pariſh where they ariſe.

How claſſed.

Tythes are uſually claſſed under three heads, viz. PERSONAL, PREDIAL, and MIXED.

PERSONAL tythes are thoſe profits ariſing from the honeſt labour and induſtry of an individual, employing himſelf in ſome perſonal work, artifice, or occupation, being the *tenth* part of the nett profits after deducting all charges and expences, according to a perſon's eſtate, condition, or degree*.

Predial tythes.

PREDIAL tythes are ſuch as ariſe merely and immediately from the ground; as for example, *grain of all ſorts*, *hay*, *pulſe*, *wood*, *fruits*, *and herbs*†.

Mixed tythes.

MIXED tythes participate in their nature both of predial and perſonal, ariſing not immediately from the ground, but from things immediately nouriſhed by the ground, as by means of goods depaſtured thereupon, or otherwiſe nouriſhed with the fruits thereof, as *all ſheep*, *beaſts*,

* This claim is nearly obſolete; millers only being, at this day, ſubject to the common payment of this tythe.——*E.*

† The tythe of the articles above enumerated, becomes due as the crop is ſevered from the ground, and as many times as a renovation or freſh crop is ſevered from the ſame land in the courſe of the year. And the tythe-holder or his deputy has a right to ſee that the ſame is fairly ſet forth from the other *nine* parts, before any particle of thoſe nine parts is removed from the field.—*Thomas* v. *Rees*, Gwil. Caſ. v. 2. p. 796.——*E.*

and *horſes*, *heifers*, *ſteers*, *colts*, *fillies*, *chickens*, *milk*, *cheeſe*, *eggs*. The depaſturing cattle of all ſorts, is called the *tythe of agiſtment*, that is, the *tenth* part of the value of the keeping or depaſturing ſuch cattle.

Tythes, *with regard to value*, are alſo divided into GREAT and SMALL; which are diſtinguiſhed by their *nature* and *quality*, and not by quantity, locality, or mode of cultivation.*

Extraparochial tythes. Seld. Hiſ. Decim p. 365. 10 Hen. c. 18. Co. 5. part 128.

Tythes extraparochial, or within the compaſs of no certain pariſh, belong to the King, and may be granted to whom he will; he being deemed a mixed perſon, and capable of tythes at *common law* in *permanency*, and in conſequence they have been adjudged to him, not only by ſeveral reſolutions of law, but alſo in parliament.

By ſtat. 2 *Edw.* 6. *cap.* 13. *ſect.* 3. "Every perſon "which ſhall have any beaſts or cattle tytheable, depaſ-"turing on any waſte or common ground, whereof the "pariſh is *not certainly known*, ſhall pay tythes for the "increaſe of the ſaid cattle to the parſon, owner, or "their farmers, of the pariſh or place where the owner "of the ſaid cattle inhabiteth."

Sect. 4. "No perſon ſhall be ſued or compelled to pay "tythes for any lands, which by the laws of this realm, "or by any privilege or preſumption, are not chargeable "with ſuch tythes, or that be diſcharged by any compo-"ſition real."

To whom tythes are due in particular caſes. Degge, p. 226. Hetly, p. 31.

If a parſon leaſe his *glebe lands*, and in ſuch leaſe doth not alſo grant the tythes thereof, *the tenant* ſhall pay the parſon tythes.

The ſame law holds if an *appropriator*, *vicar*, &c. make leaſes.

Co. 1. 111. *a.* Cro. Eliz. 261.

The parſon ſhall have tythe of his own tenant, ſo he ſhall have of his *feoffee*. If he hath lands in the ſame pariſh whereof he is parſon, and demiſe his tythes, he ſhall pay tythes to his leſſee.

Dyer 43, p. 21.

If a parſon ſow his ground, and then ſell the *emblements*

* The only criterion for determining what are *ſmall* or *vicarial* tythes, in a given pariſh, is by the *endowment* or *preſcription*: the former, when pleaded, muſt be produced; the latter is founded upon a ſuppoſed endowment, which is loſt: *Graſs*, *hay*, and *wood*, in ſome pariſhes, are *great*, in others, *ſmall* tythes, according to preſcription, founded on endowments, which may vary in almoſt every pariſh in England.——*E.*

(the

(the corn growing on the ground), the buyer of the corn ſhall pay the tythe of it to the parſon that ſowed and ſold the corn.

By ſtat. 28 *Hen.* 8. *cap.* 11. all tythes and other profits belonging to a rectory, are given to the ſucceſſor from the death of the late incumbent. Rolls, 655. K. 3.

[*Note*, Notwithſtanding the foregoing ſtatute, the law ſeems clear, that the executor of the parſon ſhall have the corn ſown by his teſtator in his life-time, as the executors of other tenants for life have by the law.]

It is ſettled, on ſtat. 28 *Hen.* 8. That if the parſon, vicar, &c. ſow the land, and be deprived, reſign, or accept another living, the ſucceſſor ſhall have the tythe.

It hath been held, that the vicar, upon a general indowment, ſhall not pay tythe for his glebe to the parſon on the fruits ariſing therefrom, *without ſpecial words* in ſuch indowment. More, 910, 457.

If a vicar be endowed of all the *ſmall tythes* ariſing within the pariſh, yet he ſhall not have the ſmall tythes ariſing upon the glebe lands of the parſon. Winch. p. 70.

Tythes by *preſcription* may be *appendant* on an ancient chapel. More, 457, 910.

By the *canon law*, *perſonal* tythes are to be paid where the party communicates, but *predial* to the parſon within whoſe pariſh the land lies. Decret. Greg. de decim, cum ſunt Gloſſ.

[*Note*, In general, tythes are to be paid for every thing that yields an *annual increaſe*, as *corn*, *hay*, *fruit*, *cattle*, *poultry*, and the like, but not for any thing that is of the *ſubſtance of the earth*, or *is not of annual increaſe*, as *ſtone*, *lime*, *chalk*, and the like; nor for creatures that are of a *wild nature*, or *feræ naturæ*, as *deer*, *hawks*, &c. whoſe increaſe, ſo as to profit the owner, is not *annual*, but *caſual*.*]. Bl. Com. v. 2. p. 24.

By the *canon law*, if ſeeds be ſown on the ſame ground, and renew *oftener* than once in the year, the tythes thereof ſhall be paid ſo often as they do renew. The *common law* holds, that *de jure* tythes are due of the *aftermath*, if not exempted by *preſcription*: And by ſeveral determinations in the Exchequer, all tytheable matters are ſubject Gibs. 633. 1 Roll. Abr. 640.

* This rule admits, nevertheleſs, of ſome exception. Tythe is due of *ſaffron*, though gathered but *once in three years*: ſo of *ſylva cædua*, or wood of *twenty years* growth.—*V. Gibs.* p. 669.

to tythe as often as they yield a profit to the owner in the year.

Things deemed from nature. Degge, p. 2. c. 8. 2 Inſt. 651.

By the *common law*, fiſh taken out of the ſea, or out of a river, are not ſubject to tythe, unleſs by *cuſtom*, as in *Wales*, *Ireland*, *Yarmouth*, and other places; nor of *conies*, or the like; but if the tytho thereof be due by *cuſtom*, it muſt be paid.

Quarries. 2 Inſt. 651. Gibſ. Cod. 669. Mod. 908.

Of *common right*, no tythes are to be paid of *quarries* of *ſtone* or *ſlate*, for that they are *parcel of the freehold*; and the parſon hath tythes of the graſs or corn which grew upon the ſurface of the land in which the quarry is; ſo alſo, not for *coal*, *turf*, *flag*, *tin*, *lead*, *brick*, *tile*, *earthen pots*, *lime*, *marl*, &c. becauſe they are not the *increaſe*, but of the *ſubſtance of the earth*.

Foreſt lands. Rob. 163 177. Gibſ. Cod. 680.

Lands which are *extraparochial*, pay tythes to the King; ſo lands lying within the precincts of a *foreſt* (though alſo in a pariſh), if they be in the hands of the King, do pay no tythes; and this privilege extends to the King's *leſſee*, but not to his *feoffee*. If the foreſt be diſafforeſted, and be within any pariſh, then they ought to pay tythes into the hands of the King's leſſee.

Parks. Gibſ Cod. 684. Waſe. c. 47.

It ſeems doubted, where a park hath paid a *modus*, and is *diſparked*, whether the *modus* ſhall continue or be diſcharged, and tythes paid *in kind*; all the authorities ſeem clear, that if the *modus* were a *certain conſideration in money*, for all the tythes of ſuch a park, ſuch *modus* ſhall continue, notwithſtanding it be diſparked. If the *modus* were for the *deer* and *herbage* of ſuch a park, the *modus* is loſt on the ſame being *diſparked*, becauſe there being no park, there can be no deer kept there.

Ibid.

If the *modus* had been to pay a *buck* and a *doe* in lieu of the tythes of ſuch a park, and the park be diſparked, the *modus* ſhall continue, and the owner may give a *buck* and a *doe* out of *another park*; but if it were to pay the *ſhoulder* of every *deer*, or particularly a *buck* or a *doe* out of the *ſame park*, the *modus* is loſt.

Ibid.

Where the *modus* was part in *money* and part in *veniſon*, out of the park (namely, *two ſhillings*, and the *ſhoulder* of every *deer*), *on ſpecial argument*, the court was divided, two being of opinion that the *two ſhillings* continued, and that the *ſpiritual court* ſhould aſſign an equitable recompenſe for the *ſhoulders*, according to the number that had been uſually paid; and the other two, that the *money* and

veniſon

veniſon, making one entire modus, the *one* being gone, the *whole* was diſſolved.

It has been determined, that the King is not, by virtue of his prerogative, diſcharged of tythes for *ancient demeſnes* of the crown, but that as *perſona mixta*, i. e. *a mixed perſon*, he is capable of a diſcharge *de non decimando*, by *preſcription*, as well as a *Biſhop*. If the King *alien* any of the lands for which he is ſo diſcharged of tythes, his *patentee* ſhall pay tythes; and the *preſcription* is thereby deſtroyed for ever, although the ſame lands ſhould afterwards come into the King's hands again by *eſcheat* or otherwiſe. Ancient demeſne. Hard. p. 315. Mich. 14 Car. 2.

By ſtatute of 2 and 3 *Edw.* 6. *c.* 13. *ſect.* 5. "All ſuch *barren heath or waſte ground*, other than ſuch as be diſcharged from the payment of tythes by ſtatute, which have lain barren, and paid no tythes, by reaſon of the ſame barrenneſs, and now be, or hereafter ſhall be improved and converted into *arable* ground or *meadow*, ſhall, after the end and term of *ſeven years* next after ſuch improvement is fully ended and determined, pay tythe for the *corn* and *hay* growing upon the ſame." Barren land.

PROVIDED, "That if any ſuch barren, waſte, or heath ground hath before that time been charged with the payment of any tythes, and the ſame be hereafter improved or converted into *arable* ground, or *meadow*; the owner thereof ſhall, during the *ſeven years* next after the ſaid improvement, pay ſuch kind of tythe as was paid for the ſame before the ſaid improvement." *ſ.* 6.

After ſeven years Here are no expreſs words of diſcharge of the tythes during the *ſeven years*, though, by the reaſonable conſtruction, it is implied, and amounts to a diſcharge during the *ſeven years* which are to be accounted to commence immediately next after the improvement.

Barren. If it doth yield *ſome fruit*, and do pay tythes for *wool* and *lamb*, or the like, yet if it be *barren land*, as to *agriculture* or *tillage*, which this clauſe evidently meant to advance, it is within the act.

If the ground be not ſuited for tillage, yet if it be not *in its own nature barren*, it is not within the meaning of the ſtatute. For example, if a wood be ſtubbed and grubbed, 2 Inſt. 656. Bunb. p. 159.

grubbed, and made fit for the plough, and employed thereunto, yet it ſhall pay tythes preſently; for woody ground is in its nature fertile, and not barren.

Land only is conſidered as *barren land*, that, *before the ploughing*, produced no profit to the owner.

Waſte ground. Bendl. 80. pl. 122. 2 Eliz. Anon. S. C. cited D. 170. *b*. Marg. pl. 5.

Waſte ground is ſuch ground as no man claims for his own, or no man can tell to whom it certainly belongs, and lies unincloſed and unbounded with hedge or ditch; but ground that lies incloſed, and hedged and ditched in, ſo that the land is known, cannot be deemed waſte ground.

Heath ground.

Heath ground is ſuch ground as is diſperſed, and lies in common.

Cro. Eliz. 475. pl. 3.

Where land is full of *thorns* and *buſhes*, from time whereof, &c. and it is grubbed up and made *meadow* or *arable* land, tythes ſhall be preſently paid thereof, notwithſtanding ſtat. 2 and 3 *Edw.* 6. *c.* 13. for thoſe lands were not *naturally barren*, but became ſo by *negligence* or *ill-huſbandry*, and the ſtatute extended only to *barren land made good by induſtry*.

Fenny land.

Fenny land, afterwards drained, is not exempted by the act.

Roll. Rep. p. 39.

Land which bears *broom* is not within ſtatute 2 *Edw.* 6. for it is not *barren land*, and, therefore, if converted into *arable*, ſhall be chargeable with tythe.

Bulſt. v. 3. p. 156.

If a man, at a great expenſe, gain land from the *ſea*, which before was marſhy and ſandy land, and covered with ſalt-water, and afterwards convert it into arable land, he ſhall pay tythes preſently, becauſe this land is not *barren of its own nature, but only by accident*, by reaſon of the ſand and ſalt-water overflowing it.

Lit. Rep. p. 311.

If ſheep are kept on barren land, whereby it yields any profit to the owner, *this* makes it *tytheable*, and ſuch tythe ought to be paid within the *ſeven years*.

2 Raym. p. 991.

Barren lands to be exempted from tythes within the true meaning of ſtat. 2 *Edw.* 6. muſt be ſuch land as is barren, *ſuapte natura*, and on ſuggeſtion for a prohibition to a ſuit for tythes of ſuch land, it muſt be alledged to be barren, *ſuapte natura*.

Burn's Eccleſ. Law, p. 388.

As to a *modus* or *cuſtomary* payment in lieu of tythes, it appears, that where *commons* are *divided*, *incloſed*, and *improved*, the *modus* can refer only to ſuch tythes as the *common* yielded before its *improvement* and *diviſion* into *ſeveralties*;

veralties; as for the *agiſtment* of *cattle*, *wool*, and *lamb*, or ſuch like; and not to the tythes of *corn*, *hay*, or other tythes accruing *de novo*, after the improvement. Where there is a *modus* in lieu of all the tythes of ſuch an eſtate, it appears that ſuch *modus* ſhall cover the *common appurtenant* to ſuch eſtate, when *divided* into *ſeveralties* and *incloſed*.

Note, *In ſtat.* 2 *and* 3 *Edw.* 6. *c.* 13. *ſect.* 6. *there are no expreſs words of diſcharge of the tythes during the* ſeven years, *yet, by reaſonable conſtruction, it amounts to a diſcharge during the* ſeven years; *and the* ſeven years *are to be accounted next after the improvement.* 2 Inſt. p. 656.

A trial al law, whether lands are *barren* or not, within the meaning of the ſtatute, muſt be had in the *temporal*, and not in the *ſpiritual* court; for in a ſuit for tythes in the *ſpiritual* court, if the defendant plead that it is *barren land*, and that plea be refuſed, or iſſue taken upon it, there a prohibition ſhall be granted: but a prohibition ſhall not be granted upon a ſuggeſtion only that it is *barren land*, before it be pleaded in the *ſpiritual* court. Degge, p. 2. c. 19. 1 Keb. p. 253.

GLEBE is a portion of land, meadow, or paſture, belonging to, or parcel of, the *parſonage* or *vicarage*, over and above the tythes. Glebe land. Godol. Rep. p. 409.

If a parſon ſow his glebe, and die before the ſeverance, and afterwards his ſucceſſor is inducted, and his executor or vendee ſevereth the corn, the ſucceſſor ſhall have the tythe thereof; for although the executor repreſent the perſon of the teſtator, yet he cannot repreſent him as a parſon, inaſmuch as another is inducted. Degge, p. 2. c. 2. 1 Roll. Abr. p. 655.

If the parſon dieth *after ſeverance* from the ground, and before the corn is carried off, in this caſe the ſucceſſor ſhall have no tythe, becauſe, though it was not ſet out, yet a right to it was veſted in the deceaſed parſon, by the ſeverance from the ground. The ſame doctrine holds in caſe of *deprivation* or *reſignation* after glebe ſown: the ſucceſſor ſhall have the tythe, if the corn was not ſevered at the time of his coming in, but not if ſevered. Gibſ. p. 662.

By the ſtat. 31 *Hen.* 8. *c.* 13. *ſect.* 21. "Where di-
" vers abbots, priors, and other eccleſiaſtical governors
" of the monaſteries, abbathies, priories, nunneries, col-
" leges, hoſpitals, houſes or friars, and other religious and
" eccleſiaſtical houſes and places diſſolved by this act,
" have

" have had divers parſonages appropriated, tythes, pen-
" ſions, and proportions, and alſo were acquitted and diſ-
" charged of the payment of tythes for their monaſteries,
" &c. the King, and all other perſons who ſhall have
" any of the ſaid monaſteries, &c. or any manors, meſ-
" ſuages, parſonages, appropriate, tythes, penſions, por-
" tions, or other hereditaments, which belonged to any
" ſuch religious houſe, ſhall hold and enjoy the ſame,
" diſcharged and acquitted of payment of tythes, as freely,
" and in as large and ample manner, as the ſaid late ab-
" bots, priors, and other eccleſiaſtical governors, held and
" enjoyed the ſame."

[Note, *For a table of monaſteries diſſolved by the above ſtatute, ſee after.*]

CHAP. III.

Of Exemption from Payment of Tythes by Modus, Cuſtom, and Preſcription, &c.

The various means of exemption.

THERE are various ways whereby abbey-lands are holden diſcharged of tythes, as *compoſition*, *bull* or *canon*, *order*, *preſcription of diſcharge*, and *unity* of poſſeſſion of parſonage and land, time out of mind, &c.

Real compoſition. Black. v. 2. p. 28

FIRST, a *real compoſition* is when an agreement is made between the owner of the lands and the parſon or vicar, with the conſent of the ordinary and the patron, that ſuch lands ſhall for the future be diſcharged from payment of tythes, by reaſon of *ſome land*, or other *real recompenſe* given to the parſon, in lieu and ſatisfaction thereof. This was countenanced by law, ſuppoſing that the clergy would be no loſers by ſuch compoſition; ſince the conſent of the ordinary, whoſe duty it is to take care of the church in general, and of the patron, whoſe intereſt it is to protect that particular church, were both made neceſſary to render the compoſition effectual; and hence aroſe all ſuch compoſitions as exiſt at this day, by force of the *common law*. But experience ſhewing that even this caution was ineffectual, and the poſſeſſions of the church being by this and other means every day diminiſhed, *the diſabling ſtatute* 13 *Eliz. c.* 10. was made, which prevents, among other ſpiritual

ſpiritual perſons, all parſons and vicars from making any conveyances of the eſtates of their churches, other than for *three lives*, or *twenty-one* years. So that now, by virtue of this ſtatute, no *real compoſition* made ſince the 13 *Eliz.* is good for any longer term than *three lives*, or *twenty-one years*, though made by conſent of the patron and ordinary: which has indeed effectually demoliſhed this kind of traffic; ſuch compoſitions being now rarely heard of, unleſs by authority of parliament.

Custom or prescription. Bl. vol. 2. p. 29.

SECONDLY, a diſcharge by *cuſtom* or *preſcription*, is where time out of mind ſuch perſons or ſuch lands have been, either partially or totally, diſcharged from the payment of tythes. And this immemorial uſuage is binding upon all parties, as it is, in its nature and evidence, of univerſal conſent and acquieſcence, and with reaſon ſuppoſes a real compoſition to have been formerly made. This *cuſtom* or *preſcription* is either *de modo decimandi*, or *de non decimando*.

A modus.

A *modus decimandi*, commonly called by the ſimple name of a *modus* only, is where there is *by cuſtom a particular manner* of tything allowed, different from the general law of taking tythes in kind, which is the actual *tenth* part of the annual increaſe. This is ſometimes a pecuniary compenſation, as *two-pence* an acre for the tythe of land: ſometimes it is a compenſation in *work and labour*, as that the parſon ſhall have only the *twelfth* cock of hay, and not the *tenth*, in conſideration of the owner's making it for him: ſometimes in lieu of a large quantity of crude or imperfect tythe, the parſon ſhall have a leſs quantity, when arrived to greater maturity, as a couple of fowls in lieu of tythe eggs; and the like. Any means, in ſhort, whereby the general law of tything is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or ſpecial manner of tything.

What makes a good modus. 1 Keb. p. 602. Salk. 657. 2 Peere Wms. 462. 11 Mod. 60.

To make a good and ſufficient *modus*, the following rules muſt be obſerved: Firſt, It muſt be *certain and invariable*, for payment of different ſums will prove it to be no *modus*, that is, no original *real compoſition*, becauſe that muſt have been one and the ſame, from its firſt original to the preſent time; Secondly, The thing given, in lieu of tythes, *muſt be beneficial to the parſon*, and not for the emolument of third perſons only: thus, a *modus* to repair the

the church in lieu of tythes is not good, becauſe that is an advantage to the pariſh only; but to repair the chancel is a good *modus*, for that is an advantage to the parſon; Thirdly, *It muſt be ſomething different from the thing compounded for*; one *load* of *hay*, in lieu of all *tythe hay*, is no good *modus*; for no parſon would *bona fide* make a compoſition to receive leſs than his due in the ſame ſpecies of tythe; and therefore the law will not ſuppoſe it poſſible for ſuch compoſition to have exiſted Fourthly, One cannot be diſcharged from payment of one ſpecies of tythe, by paying a *modus* for another. Thus, a *modus* or *one-penny* for every *milch-cow*, will diſcharge the tythe of *milch kine*, but not of *barren cattle*; for tythe is of *common right*, due for both; and therefore a *modus* for one ſhall never be a diſcharge for the other; Fifthly, *The recompſence muſt be in its nature as durable as the tythes diſcharged by it*; that is, *an inheritance certain*; and therefore a *modus* that every inhabitant of a houſe ſhall pay *four-pence* a year, in lieu of the owner's tythes, is no good *modus*; for poſſibly the houſe may not be inhabited, and then the recompence will be loſt. Sixthly, *The modus muſt not be too large*, which in law is called a *rank modus:* as if the real value of the tythes be *ſixty pounds per annum*, and a *modus* is ſuggeſted of *forty pounds*; this *modus* will not be good, though one of *forty ſhillings* might have been valid. For, in theſe caſes of *preſcriptive* or *cuſtomary moduſes*, the law ſuppoſes an original *real compoſition* to have been regularly made; which being loſt by length of time immemorial, uſage is admitted as evidence to ſhew that it once did exiſt, and that from thence ſuch uſage was derived. Now, time of memory hath been long ago aſcertained by the law to commence from the reign of *Richard the Firſt*; any cuſtom may be deſtroyed by evidence of its *non* exiſtence in any part of the long period from his days to the preſent; wherefore, as this real compoſition is ſuppoſed to have been an equitable contract, or the full value of the tythes at the time of making it, if the *modus* ſet up is ſo rank and large, as that it beyond diſpute exceeds the value of the tythes in the time of *Richard the Firſt*, this *modus* is *felo de ſe*, and deſtroys itſelf. For, as it would be deſtroyed by any direct evidence to prove its *non*-exiſtence at any time ſince that *æra*, ſo alſo it is deſtroyed

ſtroyed by carrying in itſelf this internal evidence of a much later original.

A *preſcription de non decimando* is a claim to be entirely diſcharged of tythes, and to pay no compenſation in lieu of them. Thus, the King, by his prerogative, is diſcharged from all tythes. So a vicar ſhall pay no tythes to the rector, nor the rector to the vicar, for *eccleſia decimas non ſolvit eccleſiæ*. Theſe perſonal privileges (not ariſing from, or being annexed to, the land) are perſonally confined to both the King and the clergy; for their tenant or leſſee ſhall pay tythes, though, in their own occupation, their lands are not generally tytheable. It is an eſtabliſhed rule, that in lay hands, *modus de non decimando non valet*. *Spiritual* perſons or corporations, as monaſteries, abbots, biſhops, and the like, were always capable of having their lands totally diſcharged of tythes, by various ways; Firſt, by *real compoſition*; Secondly, by the *Pope's bull* of exemption; Thirdly, by *unity of poſſeſſion*; as when the rectory of a pariſh, and lands in the ſame pariſh, both belonged to a religious houſe, thoſe lands were diſcharged of tythes by this unity of poſſeſſion; Fourthly, by *preſcription*; having never been liable to tythes, by being always in *ſpiritual* hands; Fifthly, by *virtue of their order*, as the *Knights Templars*, *Ciſtercians*, and others, whoſe lands were privileged by the Pope with a diſcharge of tythes. On the diſſolution of abbeys by *Henry* VIII. moſt of theſe exemptions from tythes would have fallen with them, and the lands become tytheable again, had they not been ſupported and upheld by ſtatute 31 *Hen.* 8. *c.* 13. which enacts, "That all perſons who ſhould come to "the poſſeſſion of the lands of any abbey then diſſolved, "ſhould hold them free and diſcharged of tythes, in as "large and ample a manner as the abbeys themſelves "formerly held them." And from this original have ſprung all the lands, which, being in lay hands, do at preſent claim to be tythe free: for if a man can ſhew his lands to have been ſuch abbey-lands, and alſo immemorially diſcharged of tythes by any of the means beforementioned, this is now a good *preſcription de non decimando*. But he muſt ſhew both the requiſites: for abbey-lands, without a ſpecial ground of diſcharge, are not diſcharged of courſe; neither will any *preſcription de non decimando*

A preſcription for not paying tythes. Cro. Eliz. 479. 511 Hob. 309. Cro. Jac. 308.

avail in total diſcharge of tythes, unleſs it relate to ſuch abbey-lands.

Gibſ. 673. It muſt be obſerved, that there is a difference between *cuſtom* and *preſcription*; *cuſtom* is that which gives right to a *province*, *county*, *hundred*, *city*, or *town*, and is common to all within the reſpective limits.

Ibid. *Preſcription* gives a right to ſome *particular houſe*, *farm*, or *other thing*.

The diſtinction between cuſtom and preſcription. Roll. Abr. 658. Gibſ. Cod. 674. *Cuſtom* and *preſcription* are either *de non decimando*, or *de modo decimandi*. *De non decimando* is to be free from the payment of tythes, without any recompenſe for the ſame. Concerning which, the general rule is, that no layman can preſcribe in *non decimando*, that is, to be diſcharged abſolutely of the payment of tythes, and to pay nothing in lieu thereof, unleſs he begin his preſcription in a religious or *eccleſiaſtical* perſon, and derive a title to it by act of parliament. But all *ſpiritual* and religious perſons, as *biſhops*, *deans*, *prebends*, *parſons*, *vicars* (as heretofore abbots and priors), may preſcribe generally in *non decimando*, for they are more favoured than lay perſons; for this is ſtill in a ſpiritual perſon, and ſo nothing is taken from the church; for ſuch *ſpiritual* perſon was capable of a grant of tythes at the *common law* in *permanency*. Hence it is, that the parſon or vicar of one pariſh, that hath part of his glebe lying in another pariſh, may preſcribe in *non decimando* for it, that is, to be free from the payment of any manner of tythe for the ſame.

This general rule, that none but *ſpiritual* perſons or corporations may preſcribe in *non decimando*, is to be underſtood with ſeveral exceptions.

Who are exempt from tythes. Gibſ. Cod. 674. Jones W. 387. Mo. 483. FIRST, That the King, as being *mixta perſona*, i. e. a *mixed perſon*, may preſcribe *de non decimando*; that as ſuch he is capable of tythes.

1 Roll. Abr. 653. Degge, p. 2. c. 16. 2 Rep. 78. SECONDLY, That the leſſee, tenant at will, and copyholder of a *ſpiritual* perſon, though a *layman*, ſhall, in this reſpect, enjoy the exemption of the leſſor, who is ſuppoſed to reap the benefit of it, in reſerving ſo much the greater rents, by reaſon of ſuch exemption.

2 Salk. 655. Ld Raym. 187. 1 Roll. Abr. 653, 654. THIRDLY, That a county, or part of a county, may well plead a cuſtom *de non decimando*, in reſpect of this or that particular tythe; as hath been pleaded and allowed

in

in the case of *tythe milk of ewes*; and of *tythe of underwood* in the wild of Kent, and in forty parishes in the wild of Sussex. A single parish may not prescribe *de non decimando* for particular tythes; nor may any larger district plead a custom, absolutely to have their lands freed from the payment of all tythes, without any thing in lieu. And lest this allowance of a *custom, de non decimando*, to laymen, in any case, should seem to break in upon the general rule, the distinction which hath been laid down is this: That in things tytheable by *custom* only, and not *de jure*, a county or hundred may prescribe in *non decimando* generally; for in that case they are discharged, without a custom to the contrary; so that it is but to insist on the old right, against which the custom hath not prevailed; but for things which are tytheable *de jure*, a county or hundred cannot prescribe in *non decimando*, more than a particular person; for it would be absurd to say, that a hundred shall prescribe in *non decimando*, where the particular persons of which it consists cannot so prescribe

It was long a question, whether a lay impropriator, as well as a clergyman, be entitled to recover the tythes, without proving payment: or whether a *non decimando* may be pleaded against a lay impropriator; but was at last determined, That a lay impropriator is under no necessity of proving payment of tythes unto him. Bunb. 274.

It has been determined in the Exchequer, that there can be no *prescription* in *non decimando* against a *lay rector* any more than against a *spiritual rector*; but that they are equally entitled to tythes of *common right*; and that it is sufficient for a lay rector to set forth in a bill brought, that he is seised of the impropriate rectory; and if he maketh out his title to that, it will be sufficient, without putting him to the proof of having received tythes. Ibid. 325.

If a vicar sue for tythes, and the parishioner, being a layman, denies that the said tythes are due to him, in such a case, unless the vicar shall prove that the tythes in question are due to him by *endowment* or *prescription*, he shall fail in his suit: the reason is, because all the tythes *de jure*, or in presumption of law, *belong to the rector*, and therefore the vicar shall receive only those tythes which he enjoys by *custom* or *prescription*, or by the *endowment*. Ough. Ord. Judg. 264.

Explanation de modus decimandi. Gibſ. Cod. 674. Degge, p. 2. c. 16. 3 Cro. 587.

A *modus decimandi* is, when lands, tenements, or hereditaments, have been given to the parſon and his ſucceſſors, or an annual certain ſum, or other profit, always, time out of mind, to the parſon and his ſucceſſors, in full ſatisfaction and diſcharge of all the tythes in kind of ſuch a place. It may be pleaded by the lord of a manor for the tythes of his manor, on account of lands of the gift of one who was lord of the manor, and held by the parſon and his ſucceſſors, time out of mind; and by a pariſh or hamlet, for this or that ſort of tythe, by reaſon of lands enjoyed by the parſons time out of mind, within ſuch pariſh or hamlet; and, LASTLY, by any private perſon for his own lands, or part thereof, in conſideration of a certain ſum of money or other recompenſe.

What makes a good cuſtom or preſcription. Degge, p. 2. c. 16.

To make theſe a good *cuſtom* or *preſcription*, it muſt have the ſeveral qualifications following: As firſt; every *modus* muſt be ſuppoſed to have had a reaſonable commencement, and in every *preſcription de modo decimandi*, it is to be intended the rate tythe *was the full value* of the tythe at the time of the original compoſition; for it cannot be preſumed that the *biſhop*, *patron*, and *ordinary*, would make a compoſition to the prejudice of the church; and if the *modus* do not *now reach the value*, it is to be intended that either the tythes are improved, or elſe that money is now become of leſs value, which makes the preſent inequality.

A compoſition real, what it is. Gibſ. 675, 676.

By *compoſition real* is meant where the preſent incumbent of any church, together with his patron and ordinary, do agree by deed under their hands and ſeals, or by fine in the King's court, that ſuch lands ſhall be freed and diſcharged of the payment of all manner of tythes for ever, paying *ſome annual payment*, or doing ſome other thing to the eaſe, profit, or advantage of the parſon or vicar to whom the tythes did belong. Theſe *real compoſitions* have ever been held and allowed here in England to be a good diſcharge of the payment of tythes. From theſe all *preſcriptions de modo decimandi* firſt took their riſe and beginning; ſince the ſtatute 1 *Eliz.* (in the caſe of *archbiſhops* and *biſhops*), and ſtatute 13 *Eliz.* (in the caſe of all other *eccleſiaſtical corporations ſole* and *aggregate*), it is agreed, that no *real compoſitions*, any more than *alienations*, can be made; ſince all grants are thereby expreſsly reſtrained and made void, which are not according to the tenor of theſe

theſe ſtatutes. And the only *modus* that can grow now, muſt be from the inadvertency of the clergy, acquieſcing in the ſelf-ſame agreements, from one ſucceſſor to another.

Where a *real compoſition* hath been made, if the lands diſcharged thereby be transferred or granted to another, the feoffee or grantee ſhall have the benefit of it. Ibid. Jones W. 369.

It is neceſſary to ſhew that the *modus* had at firſt a reaſonable commencement; for theſe *moduſes* having been from time immemorial, none can know but there were ſuch circumſtances in thoſe *ancient* times as might have made ſuch a compoſition reaſonable, though at preſent they may not be diſcoverable. It is enough to ſatisfy us, at this great diſtance of time, that the *parſon*, *patron*, and *ordinary*, before the *reſtrictive ſtatutes*, might bind the revenues of the parſon; and that all theſe *moduſes* muſt have had their commencement from an inſtrument ſigned by the *parſon*, *patron*, and *ordinary*; but there can be no colour to ſay that, becauſe ſuch inſtrument in ſo great a length of time hath been loſt, there the *modus* ſhall be loſt alſo Indeed, ſo far the law hath gone in favour of the church, as that if the inſtrument which the *parſon*, *patron*, and *ordinary* had given to a layman, owner of ſuch a farm, to diſcharge the farm of all tythes, (though this would be good while the inſtrument could be ſhewn) ſhould be once loſt, this being a privilege in *non decimando*, the privilege would be loſt by the loſs of the deed. 2 P. Wms. 573; Gibſ. Cod. 675.

The *modus* muſt be ſomething for the benefit and intereſt of the parſon, and therefore the finding *ſtraw* for the body of the church; the finding a *rope* for a *bell*; the paying *five ſhillings* to the pariſh-clerk; the paying a *quit-rent* to the lord of the manor; when theſe have been urged as diſcharges from tythes in kind, the *moduſes* have been held not to be good. Degge, 2, 16. Gibſ. Cod. 674. Marſh. 65, 91. 1 Leon. 94. Siderf. 259.

The *modus* muſt not be one tythe paid in conſideration of another; as it muſt not be to pay tythes of other kinds to be diſcharged of tythes for *dry cattle*; it muſt not be ſo much for every *cow* and *calf* for the tythe of *herbage*. Gibſ. Cod. 674. Degge, p. 2. c. 16.

A *modus* muſt alſo be ſomething in its kind different from the thing that is due; and therefore a *load of hay* in lieu of *tythe hay*, or certain *ſheaves of corn* for all tythes of *corn*, is not a *good preſcription*; but it hath been ſaid Gibſ. Cod. 675. Degge, p. 2. c. 2.

that this holds only in case the things are *de jure* tytheable, and not by *custom* only.

2 P. Wms. 572. A *modus* must be certain, and if it is uncertain, no length of time will make it good. For example, a *prescription* to pay a *penny, or thereabouts*, for every acre of *arable land*, is void for the uncertainty.

Whitehall and Giffet, Trift. 5 Geo. Latt. 8 Geo. Goddard v. Kable.

Many *moduses* have been set aside in regard that *no day of payment* was set forth by the defendant.

In the case of *Goddard, rector of Castle-Eaton in Wiles, v. Kable*, the defendant insisted upon several *moduses*, viz. *three-pence* for a *milk-cow*, *three-pence* for a *lamb*, *three-pence* for a *colt*, *one penny* for a *garden*, and the like; but they were all set aside, in regard no time for the payment thereof was ascertained by the defendant.

The general maxim on which a modus is determined. 2 B. Eccles. L. 395.

The maxim these decrees go upon is, that *tythes in kind* being a provision made by law for the clergy, which become due *at a certain determinate time*, and which, *if not then set forth*, are *immediately demandable*, shall not be taken from them by *an uncertain payment*, which becomes due *on no determinate day*, and *which they cannot know when to demand, or go about to* receive, *if it be withheld*. Besides, that such uncertainty lays a foundation for many disputes.

A *modus* must be *ancient*, and therefore if it is any thing *near the present value* of the tythe, it will be supposed to be of late commencement, and for that reason will be set aside, as in the case of *Benson, impropriator of Bromley St. Leonard, Middlesex, against Watkins and others.* Hil. 3 *Geo.* the following *modus*, viz *five shillings an acre* for tythe of *winter corn*; *four shillings an acre* for *summer corn*; *two shillings and sixpence an acre* for *upland meadow*; and *three shillings an acre* for *low land*, were set aside as too big.

Gibs. Cod. 675. 1 Cro. 139.

A *modus* must be something *durable*, because the tythe in kind is an inheritance certain, and it is against nature that it should be extinguished by a recompense not as durable at least, though not so valuable; for this reason, *four-pence* to be paid yearly by two persons inhabiting two such houses, in consideration of all tythes, hath been adjudged ill, because the houses may decay, or none live in them.

Degge, p. 2. c. 13.

Custom or *prescription* must be *constant, without interruption*, and *perpetual, from the time whereof the memory*

of

of man is not to the contrary; for if there had been frequent interruptions, there can be no *custom* or *prescription* obtained; when such *custom* or *prescription* is obtained, a disturbance for *ten* or *twenty years* shall not destroy it.

What consideration will create a modus. 2 Inst. 490. Gibs. 675. 1 Roll. Abr. 651. Watt. c. 47. Gibs. Cod. 675. 2 Bulst. 240.

It is not every consideration that will make a good *modus*, so a *modus*, though founded upon a good consideration, may be several ways discharged, and tythes become due in kind: (1.) Where land is converted to other uses; so when the *prescription* is for *hay* and *grass*, especially in so many acres of land, if the *land* is converted into *hop-garden* or *tillage*, the *prescription is gone*. (2.) By the alteration or destruction of the thing for which the money was paid; as where *two fulling-mills* were under the same roof, and turned into a *corn-mill*; where also there was *one pair of stones in a mill*, and another pair was added; and where the water-course was altered by the owner, and the *mill* was pulled down and re-edified upon it; in all these cases it has been *adjudged*, that the *modus* was gone. Where a man was seised of *eight acres of meadow*, and *one of pasture*, for the tythes whereof he had paid, time out of mind, *five shillings and four-pence*, and afterwards the owner built a *corn-mill* upon the same, it has been *adjudged*, that he should pay no other tythes for the *corn-mill*, because the land was discharged by the *modus*. (3.) By *non-payment* of the consideration, or payment of tythes in kind, for so long a time, as to destroy the possibility of making proof that such custom or prescription was: but an interruption for some short time only will not discharge it, especially if made by the lessee to the prejudice of the lessor.

2 Inst. 490. Gibs. Cod. 691.

The rule is, that the *modus* is to be sued for in the *ecclesiastical* court, as well as the very tythe; and, if it be allowed between the parties, they shall proceed there; but if the *custom* be denied, it must be tried at the *common law*; and if it be found for the *custom*, then a consultation must go, otherwise the prohibition standeth. The like is affirmed, in case a jury, upon an issue joined in a prohibition upon a *modus decimandi*, find a different *modus*: since a *modus* is found, they shall not have a consultation.

Reasons why courts of law prohibit the spiritual court from trying a modus.

The principal reasons why the courts of *common law* prohibit the *spiritual* court from trying of *moduses* are, that whereas every *modus* is *less* than the real value, the rule of the *canon law* is, that less than real value shall not

Gibſ. Cod. 691. be taken, and that a *cuſtom* to the contrary is void: and that the *eccleſiaſtical* and *temporal* laws differ in the times of limitation; *forty years or under* making a good cuſtom by the *eccleſiaſtical* laws, whereas by the *temporal* laws it muſt be beyond the time of memory.

How the ſpiritual courts proceed

Gibſ. Cod. 691. The *ſpiritual* courts have commonly allowed, and do allow, pleas of *modus decimandi*; and the averment in the prohibition is not that they do take cognizance, but that the plea hath been offered and refuſed; which ſuppoſeth, that if the plea be admitted, the prohibition ought not to go. It hath been affirmed by *Doderidge and others*, that the *ſpiritual* court may as well try the *modus* as *the right* of tythes; and that a prohibition is not to be granted till the *ſpiritual* court either refuſe to admit the plea, or proceed to try it by methods different from the rules of the *temporal* law, as to the time of limitation, or number of witneſſes, or the like. *Lord Coke* contended for the contrary doctrine. It was declared by *Kelynge* and *Twiſden*, in the caſe of the *Biſhop of Lincoln againſt Smith*, that in caſe on a libel for a *modus decimandi*, if the *ſpiritual* court allow the plea, they may try it.

Watſ. c. 56. It ſeems ſettled now, that if a *modus decimandi* be ſued for in the *eccleſiaſtical* court, a prohibition lies to ſtop the trial of it, if the *modus* be denied; and the reaſon is, not upon the account that the *ſpiritual* court wants juriſdiction, but in regard of the notion the *temporal* law hath of *cuſtom* different from the *ſpiritual*. Every *modus* is due by *cuſtom*; it is the *common law* only that can determine what time and uſage with us ſhall be ſufficient to create ſuch a *cuſtom*; that is, time beyond all memory to the contrary. Whereas, by the *ſpiritual* law, ſometimes *ten years*, ſometimes *twenty*, they will *adjudge* ſufficient to create a cuſtom. Prohibitions in ſuch caſes are granted; not becauſe the *ſpiritual* court hath not juriſdiction of the matter, but in reſpect of the trial, which is to be by the *temporal* law only: and if upon the trial it be found for the *modus*, the proceedings ſhall go on in the *ſpiritual* court; if againſt the *modus*, the prohibition ſhall ſtand.

CHAP.

CHAP. IV.

Of Things tytheable, and Things not tytheable.

ACORNS.

THESE (which are considered under the name of *masts*) are the chief of those things which the *ancient* laws call *pannage*. Gibs. Cod. 676.

Mast of oak, or *beach*, if sold, the *tenth penny* is payable for the tythe thereof; but if eaten by *swine*, then the *tenth value* or worth thereof.* Mast of oak or beach. Godolph. 417. Lindow. 300.

Acorns seem not different from that of other things tytheable; when gathered, they shall pay tythes in kind; and the *tenth penny*, or *two shillings* in the pound, in all such like cases, is not to be considered as exclusive of the tythes to be paid in kind, but only as reasonable satisfaction, when the parishioner dispose of his whole produce unsevered. Where the acorns are not gathered by the owner, but suffered to be fed upon as they drop, this case seems to fall under the same equity as where *turnips* are fed on by unprofitable cattle, for which an agistment tythe shall be paid.

AFTERMOWTH.

The rule laid down by *Rolle* is that of *after-mowth*, that is, the *second mowth*; tythes shall be paid *de jure*, without a *special prescription*, to be discharged by payment of the tythes out of the *first mowth*, and then it shall be discharged. 1 Roll. Abr. 640.

Sir Simon Degge held, that tythes are not to be paid of the *after-mowths of meadows*, unless if the meadowing be so rich that there are *two crops* of *hay* got in *one year*, then the parson shall have tythe as well of the *latter* as of the *former crops*. Degge, p. 2. c. 3.

If the occupier of the land can *prescribe*, that in consideration the owner doth make the *first tonsure* into good and sufficient *hay*, and let it forth in cocks sufficiently dried, then he shall be sufficiently discharged of the tythes of the *after-mowth*; this is a *good prescription* and dis- 1 Roll. Abr. 648. Morr. 910.

* No tythe is due of acorns eaten by the owner's pigs. *Plowd. Laws of Tything, p.* 117.—1806.

charge,

charge, by reaſon of the labour and coſt he beſtowed in making the *firſt tonſure* into *hay*.

Cro. Jac. p. 42. If the *preſcription* be, to be diſcharged of the tythe of the *after-mowth* only upon conſideration that they have uſed, time out of mind, to cut down the graſs of the *firſt-mowth*, and the ſame to tedd and ſhake abroad: and the ſame graſs ſo diſperſed and caſt abroad together into ricks and winnows, and put into ſmall cocks at their own coſts; this is ſufficient, though it be not made into *perfect hay*.†

AGISTMENT.

Agiſtment what it is. *Agiſtment* is the keeping or depaſturing of ſheep, and every other kind of tame cattle, or beaſts.

This tythe is the tenth part of the value of the keeping or depaſturing of ſuch *ſheep*, *cattle*, or *beaſts*, for the time they are *levant* and *couchant* upon the land.

It is due *communi jure*, as well as the tythe of *corn* or *hay*; it has this peculiar difficulty attending it, viz. that it cannot be taken in *kind*. For as it is no otherwiſe cut or mown, than by the mouth of the animal, along with the other nine parts, and conſumed at the ſame time, the perſon to whom it is due can only receive *the value* of it.

Sheep pay agiſtment tythes. *All ſheep* are liable to pay this tythe, from the time of their *laſt ſhearing* till the time they are ſlaughtered, ſold, or removed out of the pariſh.

As do beaſts mares, and heifers. All *beaſts* and *horſes*, not actually yielding milk, nor employed in huſbandry; *heifers*, from the time of their being weaned till they calve; or ſhould they be ſold, or removed out of the pariſh before they calve; then from the time of their being weaned till the time they are ſo ſold or removed out of the pariſh.

Steers. *Steers*, from the time of their being weaned till they are killed or ſold out of the pariſh, whether *fat* or *lean*, except during ſuch time as they are actually worked at the *plough* or in the *team*.

Horſes. *Horſes*, whether *colts* or *fillies*, are likewiſe liable to pay this tythe from the time of their being able to live without the mare.

† Although it was formerly holden that no tythe ſhould be paid of the after-paſture of the meadow-land that had been mowed within the year, yet it has been determined in the caſe of *Bateman* v. *Aſtroppe and others*, that ſuch after-eatage of the latter mowth is tytheable.—*E.*

Colts,

Colts, till they are ſold or removed out of the pariſh, or employed in the buſineſs of huſbandry. Colts.

Fillies, till they are ſo employed, or bear foals. Fillies.

All ſuch *ſheep*, *beaſts*, and *horſes*, (the two laſt of which are commonly comprehended under the general denomination of *barren* and *unprofitable cattle*) are to pay a tythe for their agiſtment during the time they have been ſo kept in any pariſh, according to the value of the keeping of *each per week*.

The two general rules for payment of agiſtment tythe are,

1ſt. *The parſon is entitled to the tenth part of the produce of the land,*† *or the value of it.*

2dly. *As often as a new increaſe ariſes, ſo often a new tythe becomes due.*

This rule is rather a conſequence from the former than an independent propoſition.

The *firſt* of the *two general rules* above laid down will rectify a miſtake, which many, both of the clergy and lay tything-men have fallen into reſpecting *agiſtment tythe*, who have imagined that the perſons to whom this tythe is due are entitled to the *tenth part* of the profit which the occupier of the land may at any time receive for the keeping of his *ſheep*, *beaſts*, and *horſes*.

On this tythe the parſon is only entitled to the *tenth part* of *the produce of the land*, or *the value of it*; he has no claim upon the occupier or owner of the ſtock *for any part of his profit*; whether the occupier gains or loſes, or what he gains or loſes, by the keeping of his ſtock.

For example; if a farmer in the ſpring have a dozen beaſts of equal value or price, which he ſells off the latter end of the year; ſome for *five pounds* profit, other for *forty ſhillings*, the reſt for none at all. The tything-man being entitled to no part of it, has no right to be reſolved as to the particular profit he received from the keeping of each, but only to the *tenth part* of the value of the depaſturage of each *per week*. If they were all kept upon the ſame land, or of the ſame goodneſs, they ought all to pay alike for the tythe of their *agiſtment*; thoſe from which the occupier received no profit, or even was a loſer by, as thoſe from which he received the moſt;

† This produce comprehends all caſes where the tythe can be taken in kind, as in *hay*, *corn*, &c.—The value where it cannot, as in agiſtment.——*E*.

the

the improvement or *non*-improvement of the beaſts depending ſolely upon the ſkill or ignorance of the occupier, in which the tything man has no concern, and in which therefore, as he runs no hazard from the one, he ought to reap no advantage from the other; which may be exemplified thus:

1ſt. *Of profitable and unprofitable ſtock kept together.*

2dly. *Of the ſame lands paying tythes ſeveral times in the ſame year.*

3dly. *Of the ſame ſtock, paying ſeveral different tythes of their agiſtment in the ſame year.*

It very ſeldom happens, that an occupier of land ſtocks his particular paſtures or fields either with all profitable or all unprofitable ſtock. They are generally kept together: but this need occaſion no difficulty, much leſs any diſpute, in aſcertaining the tythe of thoſe which are liable to pay it for their agiſtment. So many, and ſuch ſtock as are ſo liable, which have been kept upon ſuch lands, are to account for their tythe according to the value of the keeping of each *per week*, the ſame as if there had been no other ſtock kept upon ſuch lands along with them; and ſuch other ſtock as are profitable, viz. *milch-cows*, *mares* with their *foals*, *ewes* and *lambs*, and working *horſes*, and therefore not liable to pay this tythe, are to account for their tythe in a different way, either in kind or by *modus*, for each, as follow:

" Where profitable and unprofitable cattle feed toge-
" ther, tythe ſhall be paid in kind for the profitable, and
" agiſtment for the unprofitable."

For example; an occupier of land mows any of his paſtures in *July*, and pays the tythe of the hay in kind; at the proper time he turns feeding beaſts upon the *eddiſh* or *after-graſs*, which muſt pay the tythe of their agiſtment during the time they are kept upon it, according to the value or uſual price of the depaſturage of ſuch beaſts *per week* upon ſuch *eddiſh* or *after-graſs*, in a pariſh or neighbourhood.

After the *eddiſh* is conſumed and eat up by theſe beaſts, and other barren and unprofitable cattle are put and kept upon theſe ſame paſtures from that time till the next accounting day, they muſt pay the tythe of their agiſtment during the time they have been ſo kept upon thoſe paſtures, according to the keeping of each ſuch beaſt or

horſe

horſe *per week*, upon ſuch lands at that time, and in that ſtate.

Where the ſame land has paid three different tythes, or tythes three different times in the ſame year, viz.

1ſt. *Hay in kind.*

2dly. *Agiſtment tythe for the eddiſh or after-graſs.*

3dly. *And for the graſs after the eddiſh was eat off.*

For example; a grazier ſhears all his ſheep the beginning of *July*, and, after paying the tythe of their *wool* in kind, in order to feed thoſe that will be fit for ſale that year, turns them for *two months* upon the *eddiſh* of lands, which have before in the ſame year paid tythe of *hay*, in kind. The *eddiſhes* in that time being conſumed, theſe *ſheep* are turned for *three months* more upon his beſt feeding *ſummer-eaten lands:* and from that time put upon *turnips* for *two months* more; and, being then fat, are ſold to the butcher, or removed out of the pariſh for ſale.

In this caſe, theſe ſheep muſt in the ſame year pay the ſeveral following different tythes, viz.

1ſt. *Wool in kind.*

2dly. *Tythe of agiſtment.*

From the time they were ſhorn till ſold for ſlaughter, or removed out of the pariſh for ſale, viz. *ſeven months*, according to the value of the keeping of each ſheep *per week*, whilſt kept upon ſuch.

1ſt. *Eddiſh or after-graſs.*

2dly. *Summer-eaten land.* And

3dly. *Turnips reſpectively.*

Turnips when eaten.

1ſt. *By ſheep removed out of the pariſh before their next ſhearing.*

2dly, *By ſuch ſheep as are kept afterwards in the ſame pariſh till ſhorn.*

3dly. *By both ſheep and beaſts, both profitable and unprofitable.*

In ſeveral counties great quantities of turnips are grown every year; in others, the common or town field is, by agreement of the ſeveral occupiers, entirely turniped every fourth year.

Turnips are generally eaten by ſheep of ſome kind or other.

By feeding ſheep, which ſome months after the time of the laſt ſhearing are turned to feed upon turnips, and when

when ſo fatted are all ſlaughtered, ſold, or removed out of the pariſh before they are ſhorn again.

In this caſe, where the turnips are not conſumed by the occupier's *own ſheep*, but by thoſe of ſome other perſon, either of the ſame or any other pariſh, taken in to keep for hire, either at ſo much *per week each*, during their being ſo kept, the *tenth part* of the bargain is due to the tything-man, payable by the owner of the turnips, not by the owner of the ſheep.

But where the turnips are eaten by the occupier's own ſheep, the tythe muſt be eſtimated; either

1ſt. *According to the value of the turnips per acre.* Or,

2dly. *According to the value of the keeping of each per week of the ſheep which have eaten them.*

Turnips are ſometimes eaten by *ewes* or *lambs*, or both, which are afterwards kept in the ſame pariſh till after they are ſhorn again.

In this caſe, whether ſuch turnips are eaten by the occupier's own ſheep, or by thoſe of any other perſon, no tythe of agiſtment for the keeping of ſuch ſheep, nor in any reſpect for ſuch turnips, is due; ſince the ſheep which conſumed them were kept in the pariſh till they yielded to the proper tything-man the tythe of their *wool*, or the *cuſtomary modus* or *compoſition* for it.

Where turnips are eaten by ſheep, ſome of which are ſlaughtered, ſold, or removed out of the pariſh before; others kept till after they are ſhorn; or, where any kind of cattle, whether *profitable* or *unprofitable*, or *both*, are kept upon turnips along with ſheep: in all ſuch caſes, the tythe of agiſtment due can only be aſcertained from the value of the keeping of each ſuch ſheep as were ſold or removed out of the pariſh before ſhearing: and of the *barren* and *unprofitable* cattle *per week*, during the time of the keeping of each upon ſuch turnips, ſince the laſt accounting day, in the ſame manner as where all ſuch *ſheep* and *barren* and *unprofitable cattle* have been kept together upon graſs land, as inſtanced before.

Degge, p. 2. c. 5. Ld Raym. p. 129. If a foreigner, that lives in another pariſh, depaſtures ground for cattle bred to the plough and pail, to be employed in a foreign pariſh, he ſhall pay tythe for the agiſtment of ſuch cattle.

Gibſ. Cod. p. 676. Show. Ca. p. 193. If the ſame cattle are turned off to be fatted, and are grazed there, tythes of agiſtment ſhall be paid, ſince they

are

are no way beneficial to the parſon in any other tythes. The ſame doctrine holds of *cows* after they are become barren, and are fatted for ſale.

Horſes, while they are kept for the uſe of huſbandry, no tythe ſhall be paid; if for ſale, or to carry coals, or for any other uſe that yields a profit to the owner, and not profitable to the parſon, tythe ſhall be paid for them. Horſes. Gibſ. Cod. p. 676. 1 Roll. Abr. 646.

For *ſaddle-horſes* of travellers, or others taken in as *gueſts horſes*, it has been determined that tythe of agiſtment is due, becauſe no profit otherwiſe accrues to the parſon from ſuch cattle. Saddle-horſes. Bunb. 3. 1 Roll. Abr. 641.

The tythes for depaſturing unprofitable cattle ought to be paid by the occupier of the ground, and not by the owner of the cattle. Agiſtment tythe by whom to be paid. Bun. 3.

If the occupier of the ground were not in ſuch caſe made liable, it would be greatly inconvenient for the parſon to ſue every owner of the beaſts, and perhaps it would be hard to be known, and the trouble and expence would be infinite. Roll. Abr. 656. Degge, p. 2. c. 5.

If it is a common that is depaſtured, the owner of the cattle (if known) muſt pay the tythes, and not the owner of the ſoil, for the owner of the ſoil hath no profit by it. Bun. 3.

If *tythe of agiſtment* is refuſed, a ſuit may be commenced in the *ſpiritual* court againſt the occupier of the land; if for *gueſt cattle*, it may be brought either againſt the occupier of the land, or owner of the cattle.* Remedy for refuſal. Gibſ. Cod. 677. Hardw. 184.

ALDERS.

Tythe of *alders* ſhall be paid, although they be of *twenty years* growth, and more. 5 *Jac.* 1. 2 Cro. 199.

ALTARAGE.

It *was determined* (according to the *definition* of *altaragium*, given by the Biſhop of London, upon conference with the judge of the admiralty, the dean of the arches, and four other doctors of the *civil law*) that by altarage were underſtood *tythes of wool, lambs, colts, calves, pigs, goſlings, chickens, butter, cheeſe, hemp, flax, honey, fruits, herbs*, and ſuch other *ſmall tythes*, with offerings, that ſhall be due within the pariſh where produced. Gibſ. Cod. 677.

* See Tythe-tables, at the concluſion.

If

APPLES.

Plowd. on Tythes, p. 122. Ed. 1800. If the owner ſuffered another to pull his apples, the parſon ſhall have tythes; *otherwiſe*, if they be taken by perſons not known, (for they are not tytheable before plucking) unleſs they are taken after the proper time of gathering, through the neglect of the owner in letting them hang too long: [The *tenth* part ſhould be ſeparated from the *nine* parts where they grow, and tythe ſhould be paid of ſuch as fall from the trees.]

ASH.

Gibſ. Cod. 677. This is determined to be timber, and ſo tythe free, being of or above *twenty years* growth.

ASP TREES.

Ibid. 2 Roll. 83. Theſe (with *beech* and *cherry*) have been deemed timber, and tythe free, in *Buckinghamſhire*, where, in the beginning of laſt century, timber was ſcarce, and further, at that time this wood was uſed for making arrows for the defence of the realm. *Sed quere* now.

BARK.

Gibſ. Cod. 677. Plowd. Tythes, 121. Where the tree is a *timber-tree*, it ſhall pay no tythe, being privileged by the body of the tree: thus no tythe is payable for hop-poles, but no tythe is due of bark of wood of above *twenty years* cut and corded.

BEANS AND PEAS.

1 Roll. Abr. 647. Degge. p. 2. c. 3. Where a perſon gathers *green peas* to ſpend in his houſe, and there ſpends them in his family, no tythes ſhall be paid for the ſame; otherwiſe if he gathers them to ſell, or to feed hogs, in that caſe they become tytheable.

Bunb. 169. Note. *Beans* and *peas*, ſet and planted in rows, are deemed *ſmall-tythe*; they are payable to the *impropriator*, if the vicar cannot ſhew an endowment or uſage to the contrary.†

† In the caſe of Mantell v. Payne, 4 Gwill. 1504 A. D. 1798. Lord Mansfield held with reſpect to *peas*, that as there was no ſpecific mode of tything that article, to be found in the books, it was neceſſary to reſort to principle—the tythe muſt be ſet out as ſoon as it came into proper diviſions or parcels, ſo as to let the *tenth* be ſeen and huſbanded, See Tythe-tables,——*E.*

By

BEECH.

By the *common law* this is not timber, and ought therefore to pay tythe, of what growth ſoever it be; where it hath been pleaded, that, by reaſon of the ſcarcity of timber in this or that county, (as Buckinghamſhire, &c.) they are forced to uſe it for timber; the court hath adjudged it to be priviléged by *ſtat. ſylva cædua.* Gibſ. Cod. 677 1 Mod. 54. 1 Roll. 355.

BEES.

Theſe are reckoned among thoſe things that are *feræ naturæ*, or in their wild ſtate, and tythe free, yet, being gathered into hives, they become the property of ſome particular perſon, and then loſe that privilege, and are tytheable.

It has been determined, that the tythe due for them ſhall not be paid in *kind* by the *tenth ſwarm*, but that the *tenth meaſure of honey*, and the *tenth pound of wax*; ſhall be ſufficient. 1 Roll. Abr. 651. 3 Cro. 404.

BIRCH.

Determined, that tythes of birch ſhall be paid although of *twenty years growth.* Mo. 907.

BROOM.

This is tytheable, though dug up in order to clear the land for tillage, but otherwiſe if uſed for huſbandry. Gibſ. Cod. 67. Plowd. 121.

CALVES.

Of *common right*, the *tenth* calf is due to the parſon, to be taken when it is weaned, and not before; the *ſpiritual* court have determined, that if there are but *ſeven*, the parſon ſhall have *one calf*; if under *ſeven*, then a *half-penny*, or what cuſtom ſhall direct, for each calf. The *canon* law has left it to the choice of the parſon, when they are under *ſeven*, whether he will proceed in that manner, or let them run on till *one become* due in the enſuing year; the *common law* will not allow of this, becauſe tythe muſt be paid *annually*; and ſo, when the parſon ſued for a *ſeventh* calf, becoming due in that manner, a *prohibition* was granted. Gibſ. Cod 678. 1 Roll. Abr. 648.

Where there are *above ten calves*, lambs, pigs, or the like, the tythe of the odd number above *ten* ſhall be paid Bunb. 198.

for according to the value, and not carried over to the next year.

Gibſ. Cod. 678. 1 Roll. Abr. 648. A *cuſtom* of paying the *tenth* part of the price for every *calf* that is ſold, is a good cuſtom.*

CATTLE ON WASTE GROUND.

Gibſ. Cod. 678. Sav. 60. The tythe of cattle feeding upon waſtes or commons, where the bounds of pariſhes are *uncertain*, ſhall be paid to the incumbent where the owner inhabits, according to *ſtat.* 2 *Edw.* 6. *cap.* 13. unleſs exempt by *cuſtom* or *preſcription*, and limited to ſome certain incumbent.

CHALK, AND CHALK-PITS,

4 Inſt. 651. 1 Mod. Rep. 85. Not ſubject to tythe, being of the ſubſtance of the earth, and part of the freehold.

CHEESE.

Gibſ. Cod. 678. 1 Cro. 608. Mod. 309. Tythe of *cheeſe* can only be due where tythe is not paid of the *milk*; and payment of the *tenth-cheeſe* in one part of the year; for example, from *May-day* till the *firſt of Auguſt*, may be a good *preſcription* for the diſcharge of tytheable milk for the whole year.

CHERRIES AND CHERRY-TREES.

Bunb. 184, Gibſ. Cod. 678. Have been held to be ſubject to tythe, but *cherry-trees* in the 17th year of *Jac.* 1. were held to be *timber-trees* in *Buckinghamſhire*, and not ſubject to tythes, *ſed quere* now.

CHICKENS.

Gibſ. Cod. 678. Plowd. 122. Theſe are only tytheable, when the eggs were not tythed

CLAY.

2 Inſt. 63. Marſh. 55. This is not ſubject to tythe, being of the ſubſtance of the earth.

CLOVER.

Gibſ. Cod. 405. Skin. 341. Held, that if a man ſow his land with *clover*, and make his profit of the ſeed, this being a grain, the parſon

* For the diſtinction of cattle as *tytheable* or *not* tytheable, See article AGISTMENT of CATTLE, *p.* 26.

ſhall

ſhall have a tythe of it; if it is converted into *hay only*, and make his profit of the *hay*, the vicar being endowed of tythes of *hay*, ſhall have it as a *ſmall tythe*.

Clover and *vetches*, cut *green*, and given to cattle uſed in huſbandry, appears not ſubject to tythes.* Clover uſed for cattle in huſbandry. Bunb. 279.

CLOVER-GRASS.

Clover-graſs ſhall go to him that hath the tythe of hay. Watſ. c. 39.

Where the vicar is endowed of *tythe hay*, *decreed*, that he was thereby intitled to *clover*, *ſaintfoin*, and *rye-graſs*, which are ſpecies of *hay*, it being the *genus*. Bunb. 79.

CLOVER-SEED.

Clover-ſeed, which is in its nature, a *ſmall tythe*, is not to pay tythe at the mill, but the *tenth* part of the ſtock is to be ſet out in the field after it is ſevered from the ground. Lloyd v. Bentley, 4 Gwill. 1615.

A *modus* may extend to *clover*, although of late only brought into *England*, if the *modus* be ſuch as covers all tythes of hay. Ibid.

COAL.

This is exempt from payment of tythes, being of the ſubſtance of the earth, unleſs due by *cuſtom*. Gibſ. Cod. 678. 2 Inſt. 631.

COLTS. See *Calves*.

CONIES.

Theſe being *feræ naturæ*, are not tytheable of *common right*; if they are ſued for, it muſt be on the ground of *cuſtom*. Gibſ. Cod. 678. 2 Roll. 458. 1 Keb. 602.

The diſtinction is, that conies *ſpent in the houſe* ſhall not pay tythe, but ſuch *as are ſold* ſhall; the ſame doctrine has been frequently held *as to pigeons*. 2 Keb 141, 454. Gibſ. Cod. 679.

CORN.

This is deemed a *predial* great tythe, and is tytheable according to the cuſtom of the place; it is uſually tythed God. Rep. Cas. 393.

* In a late caſe, viz. *Mantel* v. *Payne*, 4 Gwill. 1504. determined in the year 1798, the Court made this exemption to depend upon the ſufficiency of other food for ſuch cattle.—*E*.

by the *tenth ſhock*, *cock*, or *ſheaf*, where the cuſtom of the place is not otherwiſe.

How tythe are to be ſet out. Watſ. c. 49.

[The owner of the corn ought to cut down and prepare the ſame, and to make it up into *ſheaves*, *cocks*, or *ſhocks*; if the owner refuſe to do it, the parſon may ſue him for the ſame in the *ſpiritual* court; though the ſuit muſt be laid *ſpecially*, viz. *for not ſetting them forth in cocks*, and not *generally*, for not ſetting them forth. If the corn is made into ſheaves, he is not bound to ſet it up in heaps, unleſs the cuſtom of the place oblige him thereunto; but having bound it into ſheaves, or made it into cocks, he may ſet forth the tythes thereof, and thereby they become lay chattels, and then he may heap his own ſheaves, or do with them as he pleaſes, and the tythes being ſet forth, the owner is not bound to watch or look after them till the parſon carries them away.

Where cuſtom governs. Watſ. c. 49. 2 P. W. 659.

If the cuſtom of the place be, to meaſure forth to the parſon the *tenth part* of the corn whilſt growing upon the land, it ſeems that this manner of tything ought to be obſerved; or if the cuſtom be, that the parſon ought to have for his tythe of *corn* the *tenth land* of corn, beginning at ſuch land as is next to the church, this cuſtom is good.

Watſ. c. 49.

If the cuſtom be, that if the odd *ſheaves* or *ſhocks*, under the number of *ten*, ſhall not be tythed, by reaſon that they ſet up the tythes in *heaps* or *ſhocks*, which of *common right* the owner of the corn is not bound to do; the owner is not bound to divide the ſaid *ſheaves* or *ſhocks*, and ſet forth the *tenth* thereof; for that ſuch cuſtom upon ſuch conſideration is good.]

Cows. See *Milk*.

DOTARDS.

Gibſ. Cod. 679. Mod. 908. 2 Cro. 101.

Dotards, which are old decayed trees, having been once privileged, as *ſylva cædua*, ſhall not pay tythes, though afterwards they become rotten, and are cut down for the fire; and yet it is certain the foundation of the privilege, (viz. their uſefulneſs in the way of timber) is gone; and ſo the privilege, if it ſubſiſt at all, muſt ſubſiſt without foundation; and though *More* reports the caſe as clearly determined, *Coke* ſays the court was divided.

Theſe

DOVES.

Theſe being kept in a *dove-houſe*, may pay tythe, by *cuſtom*, but if ſold they ſhall pay tythe. Gibſ. Cod. 679. Plowd. 125.

Determined, that the paying *thirty eggs* in *Lent* is a good *modus* for all tythes of eggs. The *general rule* is, that where tythe is not paid of *chickens*, there it is due of *eggs*; and the *modus* juſt now mentioned ſeems to croſs the rule of the law, that every *modus* ought to be ſomewhat (as to kind) different from the thing that is due. If a certain number of *ſheaves*, for all *corn*; or a *load* of *hay*, for all *hay*, it is ill; it ſeems by no means clear how *thirty eggs* for all eggs can be good, allowing them to be things that are *de jure* tytheable, which is not denied. But the diſtinction here taken is, that the *thirty eggs* are to be paid whether he had *hens* or no, and alſo are to be paid at a certain time; and ſo that payment, in the manner of it, differs from the payment of the tythe. Where paying a certain number of eggs is a good modus. 1 Roll. Abr. 648. 2 Salk. 656.

EGGS.

Theſe are either tythed in kind, according to the cuſtom of the place, which ſerves for the tythe of the tame and domeſtic fowl, where their young are not paid in kind; and where tythe of eggs is paid, there is no tythe of the young, and *vice verſa*.

ELM.

This is deemed to be timber, and within the privilege of *ſylva cædua*, or wood of *twenty years growth*, ſo as to pay no tythe, if it be of or above *twenty years growth*. Gibſ. Cod. 679.

FALLOW.

Determined, that if the parſon hath had tythe-*corn* one year, and the land lies *fallow*, without ſowing, the *next* year, in order to be ready for ploughing or ſowing the *third* year, that the parſon ſhall not have tythe for the *ſecond* year; becauſe its lying fallow meliorates the land, and gives the parſon a larger tythe the *third* year. Gibſ. Cod. 679. 1 Roll. Abr. 642.

FENS,

Being drained, ſhall not be privileged for the *firſt ſeven years*, under the name of *barren land*. Ibid.

FISH.

No tythe can be demanded of *fiſh* caught *in the ſea* or in 4 Gw. 1581. Plowd. 124.

in *rivers*, nor even in *ponds*, and in *rivers incloſed* and not *common*, which being reckoned *feræ naturæ*, are not of right tytheable.

Fiſh tytheable by cuſtom. Bunb 43.

On a queſtion as to tythe of *fiſh* due by *cuſtom*; which cuſtom was laid for all fiſh taken at ſea, and brought to land, and ſold within a certain pariſh, and alſo in another port: determined, that in caſe a double tythe may be payable, not only in *another port* where the *fiſh* is *ſold*, but alſo where the *fiſherman* inhabits; to which *three barons*, againſt the *lord chief baron*, ſaid it was a *good cuſtom*; for one tythe may be paid by *cuſtom*, and *one* of *common right*.

FLAX.

Gibſ. Cod. 680. 1 Roll. Abr. 637. 2 Lev. 365. Skin. 341, 355. Garth. 263.

Adjudged a *ſmall tythe*, notwithſtanding its being *ſown* in large fields.*

FOWLS.

Gibſ. Cod. 680. Mod. 599. 1 Roll. Abr. 642.

By this name are commonly underſtood *hens*, *geeſe*, *ducks*, and *turkies*, &c. which are ſubject to pay *tythes*, either in *eggs* or in the *young*, according to *cuſtom*, but not in *both*.

FRUIT.

Ibid. and 2 Inſt. 652.

Of *apples*, *pears*, *plums*, *cherries*, and the like, when gathered, tythe in *kind* is due. Lord Coke ſays, *fruit-trees*, if they have paid *tythe fruit*, and be cut down and ſold in *billet* or *faggot*, they ſhall not pay *tythe*; for the *fruit* and *tree* be not of *ſeveral kinds*; but *quere*, as they yield profit to the owner, which is the eſtabliſhed rule for creating a tythe to the parſon.†

FUEL.

Ibid. 1 Cro. 609. Mod. 909.

Adjudged, that *fuel* of *any kind* that is ſpent in the pariſhioners own houſes are not ſubject to tythe.‡

* By 11 and 12 *W.* 3. *c.* 16. Every perſon ſowing hemp or flax, ſhall pay to the parſon, vicar, or impropriator, yearly, after the rate of five ſhillings per acre before the ſame ſhall be carried off the ground; for the recovery of which money, the parſon, &c. ſhall have the uſual remedies at law.——*E.*

† It has ſince been determined, that *the trees* ſhall pay tythes, Grant v. Hedding and Hall, Hard. 380, A. D. 1664.——*E.*

‡ It has ſince been determined, that fuel uſed in drying hops ſhall pay tythes, 1 Freem. 334.—1698. ——*E.*

If

FURZES.

If a perſon keeps a houſe of *huſbandry*, and makes it appear that he uſed the *furzes for fuel*, or to make *pens* for his *ſheep*, no tythe ſhall be paid; but otherwiſe if ſold. Ibid. 1 Mod. 609. 3 Keb. 636. Litt. 267. Hill. 1723. Bunb. 144, 145.

GARDENS.

Theſe pay tythe of *herbs* and *plants*, as *parſley*, *ſage*, *cabbage*, *turnips*, *ſaffron*, and the like, which are deemed *ſmall tythes*, and may be demanded *in kind*; uſually a certain conſideration is paid for *theſe things*, either by *cuſtom* or by *agreement* with the parſon. If the *cuſtom* be a *parochial cuſtom*, or extending to gardens throughout the pariſh, the enlargement of a garden doth not make *tythe* due in *ſpecie*; but otherwiſe if it was a *ſpecial preſcription* for *this* or *that garden*. And the ſame doctrine holds as to *orchards*.* Gibſ. Cod. 680.

GLASS-HOUSE.

Determined, that the profit of a glaſs-houſe, which grows by the *labour* and *induſtry* of man, ſhall not pay tythe *in kind*. Gibſ. Cod. 680. Litt. 314.

GRAVEL.

This is not ſubject to tythe, as being of the ſubſtance of the earth. Gibſ. Cod. 680.

HAY.

Of *hay*, mown to feed *deer*, tythes are due of *common right*, and ſhall be paid, unleſs there be a *cuſtom* to the contrary.†

HAZLE.

Hazle, *holly*, *willow*, *white-thorn*, &c. being ſued for in the *ſpiritual* court, a prohibition was moved, and obtained; on the ſuggeſtions, that they were of *twenty years growth*, and more; and, by the *common cuſtom* of the place, were uſed for *timber* to build and repair their *ploughs*.

* All garden-ground in England ſhall pay tythes for the different crops; and turnips, when they are pulled out pay tythes, though never ſo often ſowed, and though upon the ſame land. Bunb. 10.

† Hay is of common right tytheable in ſwathes, wind-rows, or cocks, according to the cuſtom of the place.——Ed.

HEAD-LANDS.

Gibſ. Cod. 681. 2 Leon. 70. *Determined* a good diſcharge from the *tythe of hay*, upon the *head-land*, that the owner reaped, bound, and ſhocked the corn; on ſuppoſition that the tenth ridge is the thing due for the tythe, and that the labour of the owner about the corn (to which he was not bound) was a good foundation of ſuch diſcharge.

Gibſ. Cod. 681. A *cuſtom* for *head-lands* ſown with corn to be diſcharged of tythes, becauſe fed with *plough-cattle*, or *mowed* and *cut* for that purpoſe; adjudged a *good cuſtom*.

HEMP.

This pays as flax by ſtatute, which ſee antea.

HOLLY.

Gibſ. Cod. 681. 2 Cro. 199. Mod. 30. This tythe ſhall be paid, though above *twenty years growth*, unleſs on a ſpecial ſuggeſtion of ſcarcity of timber to build and repair their ploughs.

HONEY.

Gibſ. Cod. 681. *Reſolved*, that tythe of *honey* and *wax* ought to be paid in *kind de jure*; and it is accounted a *predial tythe*.

HOPS.

Hops, what they are. Gibſ. Cod. 682. Hutt. 78. On a queſtion for hops in *Kent*; *adjudged*, that they were *great tythes*; but as for hops in *orchards* or *gardens*, theſe were reſolved to belong to the vicar, as *minutæ decimæ*.*

Bunb. 79. On a caſe where the vicar was endowed of *ſmall tythes*, *agreed* that he was thereby intitled to *hops*, being a *ſmall tythe*, though of growth ſince the endowment.

Gibſ. Cod. 682. On a queſtion whether a *modus* may be pleaded to be diſcharged of tythe of hops, 22 *Car.* 2. the ſuggeſtion was, that they paid ſo much *an acre* for *tythe-hops* time out of mind: the court denied a prohibition, becauſe *hops* in *England* (whether brought in during the reign of *Hen.* 8. or of *Queen Elizabeth*) were much later than the time of memory, and therefore no *preſcription* could be pleaded.

Watſ. c. 49. Bunb. 20. A *preſcription* to pay ſo much in lieu of all *ſmall tythes* may include *hops*, and other ſuch ſmall things which have come in uſe of late years.

* Hops pay a predial tythe, and regularly are accounted among ſmall tythes.

In

In the caſe of *Walton* v. *Tyers*, in the *Exchequer*, on appeal in the Houſe of Lords, on ſolemn argument, determined, that the *tythe of hops* by *law* ought to be ſet out by *meaſure*, after they are picked from the bind or ſtem; and the decree was affirmed by the Lords. 2 B. E. L. 419.

HORSES.

Of *ſaddle-horſes*, kept for pleaſure, *tythe of agiſtment* ſhall not be paid, becauſe by theſe no profit comes in; it ſhall be paid however for *working-horſes* for the cart or plough, where they labour about ſuch things as are profitable to the owner, and of no profit to the parſon. Horſes for pleaſure. 1 Roll. Abr. 646. Gibſ. Cod. 682.

Horſes kept for *ſale*, and are *ſold*; or if they be the *horſes* of *travellers*, or others taken in as *gueſt-horſes*, it is agreed that *tythe of agiſtment* is due, becauſe a profit ariſes from them. Horſes for ſale. Gibſ. Cod. 682. 1 Roll. Abr. 647. Poph. 142.

Saddle-horſes ſhall pay no tythes no more than *cattle* for the *plough* and *pail*, or *cattle killed* for the uſe of a man's own family, in reſpect of the profit that otherwiſe accrues to the parſon from theſe. † Saddle horſes. Bunb. 3.

HOUSES.

Of *common right* no tythe ought to be paid of *houſes of habitation*, becauſe they do not grow and renew by the year; but though no tythe is payable *de jure*, yet, if time out of mind a *modus decimandi* hath been paid for houſes, it may be recovered in the *eccleſiaſtical* court in the nature of tythe; and the law will ſuppoſe that it was originally in lieu of the tythes of the land upon which the houſes are built. Gibſ. Cod. 682. 11 Rep. 16. a.

LAMBS.

Lambs are deemed a mixed *ſmall tythe*, and ſo determined in many caſes in the *Exchequer*. Gibſ. Cod. 682. Palm. 219.

Where the number is under *ten*, it is the ſame with the manner of tything calves in the like caſe, which ſee under that head; where a parſon inſiſts upon it that he will wait till the next year, that they may come up to the tytheable number; or if the lambs belonging to the ſeveral owners are put together, to be tythed jointly, in Houſe-lambs are tythed. Ibid.

† From the deciſion of the caſe Bateman v. Aiſtroppe and others, 1774, the law appears to be otherwiſe.—Plowd. Law of Tythes, 126.——*E.*

both

both cases *prohibition* will lie: in the first case, because it is against the nature of tythe by the *common law*, which is annual; and in the second, because it is a *custom* against reason; for by that means it may fall out that some one may have but *one lamb*, and that be taken for a tythe; and he that had more should pay nothing at all.

Ld Raym. 677. In the case of Selby *v.* Clerk, held by *Holt*, chief justice, that the *tenth lamb* is due to the parson by *common right*; and though they make distribution in the *ecclesiastical* courts, that is only among the parsons themselves, with relation to places of their feeding throughout the year, but does not concern the proprietor of the land, who ought to pay the *tenth lamb* to the parson by *common law*. But this, when paid, could be no foundation of a claim by way of *modus*, to be discharged of all tythes of the lambs there fed, on which the pretence for a *modus* was founded.

LEAD.

2 Inst. 651. Gibs. Cod. 682. Is one of the things which my *Lord Coke* exempts from tythe, as of the substance of the earth, and not annual; and therefore where tythe is claimed, it must be upon the foot of *custom*.

LIME.

1 Roll. Abr. 642. 2 Keb. 596. This is exempted from tythe on the same ground as lead, being considered as part of the freehold.

LOPPINGS OF TREES.

Gibs. Cod. 682 683. 2 Cro. 101. Mod. 762—908. It is agreed by all, that *timber-trees* of the age of *twenty years*, or *above*, shall not pay *tythe of loppings*; (no, not if they be cut every *ten* or *twelve years:*) but it hath been made a question, whether such branches, if the trees are lopped *before twenty years*, shall not always pay for *loppings after twenty years*, inasmuch as at the *first lopping* the tree was not privileged.

MADDER.

[This, by various acts, was put under composition at five shilling per acre, the last act expired in 1786. Mr. Plowden in his Principles and Law of Tything presumes that it pays now as a *small tythe*; but that probably the statute composition

compoſition is kept up by agreement. See Plowd. Law of Tythes, 126.]

MAPLE.

Tythe of *maple* ſhall be paid, although it be of *twenty years growth* and more. Gibſ. Cod. 683.

MAST.

Sir Simon Degge obſerves, that *tythes of crabs, maſt*, &c. is to be paid when the ſame are gathered, or ſatisfaction is to be given if eaten with ſwine on the ground. See *Acorns*. Gibſ. Cod. 683.

MILK.

On *tythe-milk*, three things are inquirable: Firſt; To whom? And that is, to the parſon in whoſe pariſh the *cows yielding milk* are depaſtured for the time; Second; In what manner? and that ſhall be, not by the *tenth part of every meal*, but by every *tenth meal* entire; Third; At what place? and that was *adjudged* to be the *church-porch*, whither it ſhall be brought by the pariſhioner. Declared *per curiam*, that of *common right tythe-milk* is payable at the *parſonage* or *vicarage-houſe*. Manner of paying tythe of milk. Gibſ. Cod. 683. Ld Raym. 129.

The ſame rules that take place as to the *milk of cows*, do, by parity of reaſon, and according to the laws of the church, hold in the *milk of goats* and *ewes*, where it is preſerved. Gibſ. Cod. 683.

In the caſe of Dodſon *v.* Oliver, *decreed*, that if there be any *cuſtom* in a pariſh for the manner of *tything-milk*, as to carry it to the *church-porch*, or *parſonage-houſe*, that muſt be obſerved by the pariſhioner; but if there be no particular cuſtom or uſage, the pariſhioner is obliged *de jure* to pay every *tenth meal*, to milk the cows at the uſual place of milking into his own pails; and the parſon is obliged to fetch it away from the milking-place in his own pails, in a reaſonable time; and if he doth not fetch it before the next milking-time, the pariſhioner may juſtify pouring the milk upon the ground, becauſe he hath occaſion for his own pails. *Determined* by the whole court of *Exchequer* in this caſe, that the milk ought not to be carried either to the *church-porch*, or to the *parſon's houſe*, and that it ought to be fetched by the parſon. Bunb. 73.

Mills

MILLS.

Gibſ. Cod 683. Show. 281. Curth. 215. 2 Inſt. 671.

Mills are of two ſorts, either *corn-mills*, or *mills for other uſes*, as *paper-mills*, *fulling-mills*, and the like. *Corn-mills* have been commonly thought to yield a *predial tythe*, viz. the *tenth toll-diſh*, from its belonging to the incumbent where the mill ſtands, and not where the miller dwells; according to the known diſtinction, that *predial tythes* are payable wherein they ariſe; *perſonal* where the perſon hears divine ſervice, and receives the ſacrament: as was argued by my Lord Chief Juſtice Holt, 3 *W.* & *M.* in the caſe of Gumley *v.* Falkingham, contrary to the ſuggeſtion of Coke in his *commentary upon articuli cleri, cap.* 5. where he ſpeaks of ſome who would have the *tythe of corn-mills* to be perſonal, as well as the *tythe of other mills*; and it hath been ſo adjudged in the Houſe of Lords to be a *perſonal tythe*, contrary to the determination of *Lyndwood*.

2 P. Will. 463.

It was determined by the Houſe of Lords, that *mills are tytheable*, but that the ſame is a *perſonal tythe*, and ſo ought to be paid out of the *clear gain*, after all manner of charges and expences are deducted, as the Exchequer formerly decreed in *Newte* v. *Chamberlayne*, 20th Feb. 1705.

WIND-MILLS.

Degge, p. 2. c. 9.

The *canoniſts* hold, that this is a *predial tythe*, and that the *tenth toll-diſh* ought to be paid for the ſame, without deduction of expences: but this doth not agree with the *common law*, and therefore is not binding.

Fulling-mills, tin-mills, lead-mills, and plate-mills. Gibſ. Cod. 166.

By ſtatute 9 *Edw.* 2. *ſtat.* 1. *c.* 5. "If any do erect in "his ground a mill of new, and afterwards the parſon of "the ſame place demandeth the tythe for the ſame, the "King's prohibition ſhall not lie."

It hath been reſolved, that *fulling-mills*, *tin-mills*, *lead-mills*, *plate-mills*, and the like, are not within this ſtatute, nor is tythe due of ſuch otherwiſe than by *cuſtom*.

Bunb. 133.

"Mills, where their firſt erection is not known, the "rule of their diſcharge ſeems to be, that all ſuch mills "whoſe firſt erection was before time or memory, and is "not otherwiſe known by matter of record, and have not "been ſubject to the payment of tythes, ſhall be intended "to be erected before the ſtatute, and ſo to be tythe-free.

"But

" But as to mills for which tythes have been paid, and new " mills, tythes muſt be paid for them."

Where there is a *modus* in lieu of all tythes iſſuing out of a meſſuage, and an *ancient* water-mill for corn, and a new water-mill for corn is erected within the ſaid meſſuage, if the ſtream on which the *ancient* mill ſtood is diverted by the owner *(and not by the act of God)*, and a new mill erected upon the new ſtream, they ſhall not be diſcharged by virtue of any *former modus.* 1 Roll. Abr. 641.

Where there hath been an *ancient* corn-mill, for which a *modus* hath been paid for time *immemorial*, and afterwards, by continuance of time, the mill-ſtream changes its courſe, and goes in a place a little diſtant from the *ancient* ſtream, and thereupon the owner of the mill pulls it down, and rebuilds it in the new place where the ſtream now runs, this ſhall be diſcharged of tythes by force of the *ancient modus*; for this comes by the act of God, and not by the act of the party. Ibid.

[In *Gaches* v. *Haynes*, 1784, 3 Gwill. 1256, it was laid down by Lord Chief Baron Eyre, that though the tythe of a mill were to be recovered and paid for as a *perſonal tythe*, yet it was not ſtrictly to be taken as a *perſonal tythe* in all reſpects, for it was *predial* as to its *locality*. And ſince the above deciſion, in the caſe of *Hall* v. *Macket and others*, 1784, 3 Inſt. 917. Lord Chief Baron Macdonald obſerved, " the principle upon " which the tythe of mills depends, ſeems now clearly " fixed in *Newte* v. *Chamberlayne*, and *Gaches* v. *Haynes*, " and the other caſes: it is now ſettled, that it is to be " conſidered as a *predial* tythe ſo far as regards its locality, " and the perſon to whom it is payable, but the mode of " payment is to be treated as a *perſonal* tythe."]

NURSERIES.

On theſe two queſtions ariſe; Firſt; Whether they ſhall pay tythe? And though it was urged that they are of the nature of the land, and ſo are privileged, yet the whole court was of opinion, that inaſmuch as the owner dug them up, and made profit of them, and ſold them in another pariſh, tythe ſhould be paid of them. Secondly; By whom the tythe ſhall be paid? Which queſtion was reſolved by the court in the caſe of *Grant* v. *Kidding and Ball*, viz. if the owner ſells them, and pulls them up him- Gibſ. Cod. 683, 684. 3 Cro 526. Jones W. 416. Hard. 380.

himſelf, he ſhall pay the tythes; but if he fell them particularly to another, the vendee ſhall pay the tythes.

OAK.

This, together with *aſh* and *elm*, are privileged from paying tythe by the *ſtatute of ſylva cædua*, as timber, being of or above the growth of *twenty years*, it hath been reſolved, that *oak* under *twenty years*, being fit for timber in time to come, ſhall not pay tythe; and that though it ſtands till it is rotten, and unfit not only for timber, but for all manner of uſes except the fire, it ſhall be privileged, becauſe it hath been once privileged.

EASTER OFFERINGS.

Bunb. 173. 174. Decreed, that *Eaſter offerings* were due of *common right* at *two-pence per head*, unleſs it be cuſtomary to pay more.

ORCHARDS.

If the ſoil of an orchard be ſown with any kind of grain, the parſon ſhall have tythe of the *fruit-trees*, and of the grain, for they be of ſeveral and diſtinct kinds.

OSIERS.

Theſe being employed in hurdles for ſheep, no tythe ſhall be paid of them.

PARKS.

Gibſ. Cod. 684. Mod. 900. 3 Cro. 467. 2 Bulſt. 240. All the *books* are clear, that if the *modus* was a certain conſideration in money for all the tythes of ſuch a park, ſuch *modus* ſhall hold, notwithſtanding it be diſparked.—But if the *modus* was for the *deer* and *herbage* of ſuch a park, the *modus* is gone upon ſuch park being diſparked.

Gibſ. Cod 684. Noy, 34. Mod. 209. The ſame doctrine holds, if the *modus* had been to pay a *buck* and a *doe* for all tythes of ſuch a park, and the park is diſparked, the *modus* ſhall continue, and the owner may give a *buck* and a *doe* out of another park; but if he was to pay the *ſhoulder of every deer*, or expreſsly a *buck* or a *doe* out of the ſame park, the *modus* is gone.

PARTRIDGES.

Gibſ. Cod. 684. 1 Roll. Abr. 636. No tythe ſhall be paid of the *eggs* or *young of partridges* and *phœaſants*, becauſe they are *feræ naturæ*; and though they

they are made tame, or be kept in a place incloſed, (their wings being clipped) and there lay eggs, and hatch young ones, yet this is held not to alter the caſe.

PEAS

Are tytheable as beans, but it has been held, that if one gather *green-peas* to be eaten in his houſe, no tythe ſhall be paid of them; but if gathered for ſale, or to feed hogs, they become ſubject to tythe. 1 Roll. Ab. 647.

PHEASANTS,

Pay no tythes. Gibſ. Cod. 684.

PIGEONS.

No tythe due for *pigeons* ſpent in the houſe, but are ſubject to tythe, if ſold. Gibſ. Cod. 684. 2 Roll. Rep. 2.

The ſame doctrine holds as to pigeons which are in holes about a houſe, and increaſe there.

RAKINGS.

Where rakings are of great value, or if left upon the land colluſively, tythes ſhall be paid of them; but if left in ſmall quantity, and involuntary, it is otherwiſe. Gibſ. Cod. 684.

RAPE-SEED.

This is deemed a *ſmall tythe*, and it is uſual for the occupier of the land to agree with the owner of the tythe for the tythe of rape-ſeed at ſo much an acre. Burn. E. L. 406.

ROOTS.

Held, that if a man cut *coppice-wood*, and pay tythe of it, and before any new branches ſprung out, grub up the roots and ſtubs of the wood, he ſhould not pay tythe of them, becauſe they are *parcel of the frank tenement*, and do not renew annually. Gibſ. Cod. 684.

SAFFRON

Is a *predial ſmall tythe*; but there does not appear any caſe upon the mode of taking it in kind.

SALT

Not tytheable, but by *cuſtom* only. Gibſ. Cod. 685.

TARES.

TARES.

Bunb. 279. Held, that *tares, whether green* or *ripe*, are a *great tythe*, and belonged to the *rector*; if given to cattle of husbandry, not subject to tythe, as the court seemed to think.

PRESCRIPTION.

Watf. 491 Bunb. 279. A *prescription* may be within a parish that, by reason they have not sufficient meadow for *milch-kine* and *draught-cattle*, they have used to cut some of their *tares green*, and give them to the aforesaid stock, and to be discharged of tythes for the same; and this is a *good custom*, on consideration for that the parson hath an advantage thereby as well as the parishioner, *namely*, in the *tythe-milk*, and manuring of the *other corn land*; and the matter is, the want of meadow and pasture; and the surmise is, that if it had been said, that for want of meadow and pasture they have used to eat their meadows with their plough-cattle, and for so much as they did eat to pay no tythes.

Watf. 491 The same if a man, according to the custom of the country, doth sow his land to feed his *horses for tillage*, and the use hath been to suffer the horses to be fed upon the land, without any mowing of the grain, the parson shall not have any tythes thereof, because it is no more than *pasture for his horses*.

TILE.

2 Inst. 651 Not tytheable, being of the substance of the earth, and not annual.

TREES.

Lynd. 200. By a constitution of *Archbishop Winchelsea*, tythes shall be paid of trees if they be sold; which *Lyndwood* explains of *large trees* which do bear fruit, and being cut down, are not fit for timber, but are used for fuel.

By statute 45 *Edw.* 3. *c.* 3. it is enacted as followeth: "As the complaint of the great men and the commons, "shewing by their petition, that whereas they sell their "great wood of the age of *twenty years*, or of greater age, "to merchants, for their own profit, or in aid of the "King in his wars, parsons and vicars of *holy church* do "implead and draw the said merchants in the *spiritual* "court

"court for the tythes of the ſaid wood, in the name of "this word called *ſylva cædua*, whereby they cannot ſell "their woods to the very value, to the great damage of "them and of the realm; it is ordained and eſtabliſhed, "that a *prohibition* in this caſe ſhall be granted, and upon "the ſame an attachment, as it hath been uſed before his "time."

"The wood intended in this ſtatute is ſuch as is fit for 2 Inſt. 643.
"building of houſes and ſhips, and therefore without "doubt it comprehends oak, elm, and aſh; but it hath alſo "been adjudged to include *beech*, as timber in Bucking-"hamſhire, and ſome other counties, where better timber "is not to be had, or is very ſcarce. And thoſe trees are "free, not only as to the trunk or timber, but alſo as to "the bark, root, and germins that grew upon the ancient "ſtock; and it is not material how often or how ſeldom "the branches thereof are lopped, becauſe being once "free, they are always free."

TIMBER TREES.

Timber-trees above *twenty years growth*, cut and corded Bunb. 98.
for fuel, and the bark ſtripped from the ſame, *adjudged* to pay tythes as well as underwood; and that no tythe was due for ſuch wood above *twenty years growth*, nor of the bark thereof, which was not corded.

TURF.

Tythe-free, as part of the freehold. 2 Inſt. 651.

TURKIES.

In the caſe of Carlton *v.* Brightwell, it was holden by 2 P. Wms. 642.
the Maſter of the Rolls, that *turkies* are birds as tame as hens or other poultry, and therefore muſt pay tythes. And alſo that if tythes be *once* paid of *eggs*, there can be no demand made a ſecond time in reſpect of the *chicken* hatched afterwards.

TURNIPS.

Held, that where land is ſown with *turnips* after the Bunb. 314.
corn is cleared, and fed with ſheep and barren cattle, that tythe ſhall be paid of ſuch *turnips*; though it was inſiſted

upon, that the ſoil in that county (Staffordſhire) was *dry* and *ſandy*, and that this method of huſbandry improved the land, ſo that the parſon had *uberiores decimas* of *corn*, and had received the tythe of *lambs* and *wool* of the *ſheep* ſo fed before; but the court over-ruled this defence, and ſaid it amounted to a *non decimando* as to tythes.

3 Gwill. 859. 1756, M.S. Do. 945. 1768. [This tythe is payable by the owner of the land, not of the beaſts, and muſt be ſet out in heaps, where the quantity will admit it.]

WASTES.

By ſtatute 2 *Edw.* 6. *c.* 13. *ſect.* 3. the tythe of cattle feeding on large waſtes, where the pariſh is uncertain, ſhall pay tythe to the incumbent of that pariſh in which the owner of the cattle dwells, unleſs limited otherwiſe by cuſtom or preſcription.

WILLOWS

Gibſ. Cod. 685. Are not tytheable if growing about a houſe, though it is waſte to fell them; yet being felled, tythe ſhall be paid of them.

WOAD

3 Cro. 28. Growing in the nature of an *herb*, the tythe thereof is a ſmall tythe.

2 Gwill. 473. [It muſt be ſet out in baſkets, both at firſt and ſecond cutting.]

WOOD.

Gibſ. Cod. 686. According to the common opinion, *wood* paſſes for a great tythe; that in controverſies between *parſon* and *vicar*, where the endowment is loſt, this point is determined by preſcription; and in caſe the endowment remains, and doth not expreſsly mention wood, and yet that tythe hath been uſually taken by the *vicar*, the law will, by favourable conſtruction, either graft it upon ſome general expreſſion in the endowment, or elſe preſume that there might be a ſubſequent augmentation of the endowment of the *vicar*, by which he became entitled to *tythe-wood*.

That

That wood is a *predial* tythe, is plain, but whether *great* or *ſmall*, hath been a queſtion between the *perſons* and *vicars*; and it hath been reſolved, that if a vicar be only endowed with the ſmall tythes, and have, by reaſon thereof, always had tythe-wood, in ſuch caſe it ſhall be accounted a ſmall tythe, otherwiſe it is to be accounted amongſt the great tythes. But this doth not alter the quality of the tythe; and the vicar's having received it, may be evidence of a grant thereof having been made ſubſequent to the endowment, although ſuch original grant is now loſt, but is not evidence that wood in itſelf is a ſmall tythe. Whether a great or ſmall tythe. Degge, 2. c. 1.

Firſt; with regard to the age; *timber-trees*, of or above *twenty years growth*, are diſcharged by the ſtatute of *ſylva cædua*; Secondly; with regard to the uſe it is put to; wood for the owner's firing, hedging and fencing of the premiſes within the ſame pariſh, hath been adjudged *tythe-free*; but this is to be alledged, not abſolutely, that *per legem terræ* wood ſo applied ſhall not pay tythe: but *ſub modo*, that the perſon hath ſome conſideration for it, or at leaſt that the houſe is for maintenance of huſbandry, by reaſon of which the parſon hath *uberiores decimas*. How wood may be diſcharged from tythes. 3 Cro. 113. Mod. 683. Litt. 52. Keb. 319. Palm. 37.

In divers places they fell out the *tenth acre of wood* ſtanding; and ſo it may be by the *pole* or *perch*, or by the *tenth faggot* or *billet*, according as the cuſtom of the place hath been. Manner of tything wood. Hob. 350.

[Tythe-wood ſet out, ought to be ſtacked and faggotted.*

WOOL.

There is no diſpute concerning the tythe which wool yields, it being univerſally agreed to be a *predial ſmall tythe*. Even hog-wool,† wool-locks, and flocks of wool, after the wool is made, are tytheable, if there be more than ordinary left out, otherwiſe not.

Notwithſtanding the former doctrine of apportioning the tythe-wool according to the time the ſheep may agiſt Bateman v. Aiſtroppe, 2 Raym. 670. A. D. 1732.

* So held in the caſe of Brabourne v. Eyres, — 1 Wood, 127. A. D. 1672. This, however, ſeems to be queſtioned by the caſe of Bree v. Drewe, 1729. 2 Gwill. 700. from M, S. Perhaps there is no one branch of tythe on which the books ſeem more at variance, than on the tythe of wood.——E.

† The wool of a ſheep one year old.

in ſeveral pariſhes, the law is now ſettled, that the whole of the tythe of wool ſhall be paid to the rector or vicar of the pariſh in which the ſheep are ſhorn, and it is payable *when* the ſheep are ſhorn.

Wilſon v. Bp. of Carliſle. Hob. 107.

It appears that wool ought to be ſet out in bales and heaps in *ſight, and within touch* of the other *nine* parts, of which the parſon may judge of the fairneſs of his tythe by his own ſenſes, from *weight, quality*, and *meaſure*.]

CHAP. V.

The Manner of ſetting out, and taking and carrying away Tythes, as ſettled by the Common Statute and Eccleſiaſtical Law.

How tythes are to be ſet out.

Gibſ. Cod. 688. Noy, 134. 1 Roll. Abr. 643. 2 Vent.

A PERSON is bound, of *common right*, to cut down, and ſet out the tythes of his land: for example, a parſon made a collector of tythes, and that collector licenſed a pariſhioner to carry away his corn without ſetting forth of tythes, and determined *a void* licenſe. The law of the church entitles the parſon to have notice given him; the *common law* conſiders ſuch notice as not neceſſary. The furtheſt they have gone is to declare a cuſtom of tything, without view, an abſurd cuſtom; and ſtatute 2 *Edw.* 6. *cap.* 13. *ſect.* 2. entitles a parſon, though not to notice, to a right of ſeeing it ſet out.

When they are to be ſet out.

Gibſ. Cod. 688. 689. 2 Leon. 70. 2 Keb. 36. Siderf. 280.

The time and manner of ſetting out tythes (*i. e. whether it is to be done when the things are in ſheaves, or cocks, or ſhocks*) depends on the particular cuſtom of the place. The *common law* declares, that of *common right* the owner is obliged to do no more, in order to the tything of corn, than to bind it up in ſheaves. It being a maxim, that every *modus* muſt be ſomething for the advantage of the parſon, which the owner is not bound to do, the ſetting into cocks or ſhocks hath been offered as the foundation of a *modus*, when no other pretence could be found; and particularly adjudged a good conſideration for not tything the odd ſheaves under the number of *ten*. There are no *ancient* teſtimonies to make the tything in ſheaves the *common law* of tything. Lyndwood (who uſually diſtinguiſhes between what is due *de jure communi* and what *de conſuetudine*) ſets all the method of tything upon the ſame foot of cuſtom.

The

The tenth land of corn, *(inſtead of the tenth ſheaf or ſhock)* beginning with that land which is nigheſt to the church, hath been adjudged a good cuſtom; notwithſtanding it was alleged, that the occupiers, knowing which would fall to the ſhare of the parſon, did not till, manure, or ſow it as they did the reſt; for this fraud (they ſaid) might be remedied by an action at *common law*. Might not the cuſtom as well be declared a cuſtom againſt reaſon, when the preſumption is ſo ſtrong, that in caſe the occupier will not beſtow equal care upon it as upon his own, and when it is ſo difficult to ſtate the degrees of care taken or required; and ſince, if due care be not taken, no remedy is left but what is worſe than the diſeaſe? Gibſ. Cod. 689. Mo. 913.

It is reported to have been determined in the Common Pleas, that by the *civil law* the parſon ought to have his tythe by the *tenth ridge*. The maxims of *civil* and *canon law* are not uſually over-valued in our temporal courts; but the uſe which was made of this was, that the reaping, binding, and ſhocking, being (in conſequence of that doctrine) more than the owner was bound to do, theſe ſhould become a good *modus* to diſcharge him of tythe for the hay growing in the head-lands. Gibſ. Cod. 689. 2 Leon. 70.

Tythes being ſet out, or ſevered from the *nine parts*, become *lay chattels*. So held on this foundation, when the tythe of corn was ſet out in ſheaves, and the parſon would not take it, but prayed remedy in the *ſpiritual* court, a prohibition was granted; and when a ſequeſtration was prayed in the *temporal* court of tythes not ſet out, the right of which was in controverſy, the party was told his requeſt had been reaſonable, if they had been ſevered from the *nine parts*. On the ſame principle, if after ſeverance they are carried away by a ſtranger, the remedy is in the temporal courts: and though it is otherwiſe, if carried away by the owner, becauſe his ſetting them out in order to carry them away, is deemed a fraudulent ſetting out. What tythes are when ſet out. Gibſ. Cod. 689. 2 Leon. 281. Sav. c. 71. 1 Cro. 607. Noy, 44. Mod. 502. 2 Roll. 440.

After ſeverance it reſts upon the parſon, and not upon the owner of the land. It was determined in the caſe of Dr. Bridgman, that though the pariſhioner ought *de jure* to reap the corn, he is not bound to guard the tythes of the parſon; on the contrary, if the parſon does not carry them away in convenient time, an action on the caſe lies againſt him. But ſo, that the pariſhioner may neither Of whom the care of tythes fall when ſet out. Gibſ. Cod. 689. Noy, 31.

bring ſuch action, nor put in his cattle till he hath given notice to the parſon that they are ſet out. If tythes be ſpoiled, and the parſon ſeeks remedy in the ſpiritual court, and a prohibition is obtained upon *falſe* ſuggeſtions, a conſultation is provided in the Regiſter.

Comyns, 22. On a caſe where the occupier, after ſeverance, took the *nine parts*, and turned his cattle into the meadows where the tythes were, which deſtroyed and conſumed the tythes. Holt, Chief Juſtice, ſaid, that though there was no obligation to give notice of the ſeverance, yet he thought the turning of cattle to the tythe made it a *fraudulent* ſeverance, and that a ſuit might be maintained for it in the ſpiritual court.

When tythe ſet out, parſon may ſpread and dry them. When the tythes are ſet forth, the parſon may of *common right* come himſelf, or his ſervants, and ſpread abroad, dry and ſtack his corn, hay, or the like, in any convenient place or places upon the ground where the ſame grew, till it be ſufficiently weathered, and fit to be carried into the barn. He muſt not take a longer time for the doing thereof than what is convenient and neceſſary; what ſhall be deemed a *convenient* and *neceſſary* time, the law neither doth nor can define; as this muſt be determined by the quantity of the corn or hay, and the weather; what ſhall, therefore, in this, and all other caſes of the like nature, be ſaid to be a *reaſonable* and *convenient* time, is to be determined by the jury, if the point come in iſſue before a jury: if on a demurrer, or other matter of law, the court where the ſame is tried are to determine it.

Degge, p. 2. c. 14. Str. 245.

Stat. 2 & 3 Ed. 6. cap. 13. ſect. 2. By ſtatute 2 and 3 *Edw.* 6. *cap.* 13. *ſect.* 2. "If any "perſon carry away his corn or hay, or his other "*predial* tythes, before the tythe thereof be ſet forth; or "willingly withdraw his tythes of the ſame, or of ſuch "other things whereof *predial* tythes ought to be paid; "and if any perſon do ſtop, or let the parſon, vicar, pro- "prietor, owner, or other their deputies or farmers, to "view, take, and carry away their tythes, as is above- "ſaid, he ſhall forfeit double value, with coſts, to be re- "covered in the eccleſiaſtical court."

As to a convenient time for the parſon to carry away his tythes. The parſon has a right to carry away his tythes; if he be obſtructed, he ſhall have a remedy in the ſpiritual court. By the 8th *Jac.* 1, a conſultation was granted on this

this point, and adjudged a fraudulent ſetting out; which though poſſibly a good reaſon, ſeems not to be a true one, but to be uſed on purpoſe to ſave the *maxim*, of tythes being a *lay-chattel* after ſetting out; ſince (without the help of that diſtinction) ſtat. 2 *Ed.* 6. c. 13. ſect. 2. doth in expreſs words give remedy before the ſpiritual judge, in caſe the parſon is ſtopped in carrying away his tythes; on which it was reſolved, (43 *Eliz.* in Blackwall's caſe) that the queſtion being in the ſpiritual court, whether the gate was locked or open, no prohibition ſhould be granted. Gibſ. Cod. 638. 1 Cro. 844.

The parſon may carry his tythes from the ground where they grew, either by the common way, or any ſuch way as the owner of the land uſed to carry away his *nine parts*. Where there are more ways than one, and the queſtion is, which is the right way, this is cognizable in the temporal court. Degg. p. 2. c. 14.

If the owner of the ſoil, after he hath duly ſet forth his tythes, will ſtop up the ways, and not ſuffer the parſon to carry away his tythes, or to ſpread, dry, and ſtack them on the land, this is no good ſetting forth of his tythes without fraud, within the ſtatute: and the parſon may have an action on the ſaid ſtatute, and may recover the *treble value*; or may have an action on the caſe for ſuch diſturbance; or he may, if he will, break open the gate or fence which hinders him, and carry away his tythes. Degge, p. 2. c. 14. Sir. 845.

If this ſtep becomes neceſſary, he muſt be cautious that he commit no riot, nor break any gate, rails, lock, or hedges, more than neceſſarily he muſt for his paſſage. Deg. p. 2. c. 14.

When he comes with his carts, teams, or other carriages, to carry away his tythes, he muſt not ſuffer his horſes or oxen to eat and depaſture the graſs growing in the grounds where the tythes ariſe, much leſs the corn there growing or cut: but if his cattle (as cannot be avoided) do in their paſſage, againſt the will of their driver, ſnatch ſome of the graſs, this is excuſeable. Deg. p. 2. c. 14.

If tythes after ſet out remain too long on the land, the owner of the ſoil may take them *damage feaſant*: if he be ſued for them, in order to juſtify, he muſt ſet forth how long they had remained before he took them; and when they ſhall be ſaid to remain too long, is triable by the jury. The remedy where tythes remain too long after ſet out. Watſ. c. 54.

Degge. p. 2. c. 14. Ld. Raym. p. 187.

An action on the caſe will lie againſt the parſon for his negligence in this behalf; but no action in ſuch caſe will lie, unleſs the pariſhioner has duly ſet forth his tythes, and hath alſo given notice to the parſon that they are ſo ſet forth.

CHAP. VI.

The ſeveral Remedies to be taken for the Recovery of Tythes by the Common Statute and Eccleſiaſtical Law.

Where tythes were recoverable in old times 2 Inſt. 661.

IN old times tythes were recoverable in the *county-court*, where the biſhop or his deputy, and the ſheriff, did ſit as co-ordinate judges, there being at that time no ſeparate court of ordinary eccleſiaſtical juriſdiction.

When recoverable in the eccleſiaſtical courts. Lind. 191.

By a conſtitution of Archbiſhop Winchelſea. "Foraſmuch as many are found, who are not willing freely "to pay their tythes, we do ordain that the pariſhioners "be admoniſhed *once*, *twice*, and *thrice*, to pay their "tythes to God and the church; and if they do not "amend, they ſhall firſt be ſuſpended from the entrance "of the church, and ſo at laſt be compelled to pay their "tythes by cenſures eccleſiaſtical, if it ſhall be neceſſary: "and if they ſhall deſire a relaxation or abſolution of the "ſaid ſuſpenſion, they ſhall be remitted to the ordinary "of the place, to be abſolved and puniſhed in due manner."

13 Ed. 1. ſect. 4.

By the ſtatute of *circumſpecte agatis*, 13 *Edw.* 1. *ſtat.* 4. The King to his judges ſendeth greeting; "Act *circumſpectly* in all matters concerning the clergy, not puniſhing them if they hold plea in court chriſtian, in the "caſe where a parſon doth demand of his pariſhioners "oblation of tythes due and *accuſtomed*; in which caſe "the ſpiritual judge ſhall have power to take knowledge, "notwithſtanding the King's prohibition."

Gibſ. Cod. 691. cites Hob. 247. Noy. 81. Hetl. 133. 1 Vent. 32.

Accuſtomed] By this act, *modus decimandi* and *real compoſition* are eſtabliſhed; for hereby are tythes divided into two parts; in *decimas debitas*, or *quota pars*, the tenth part, and into *decimas conſuetas*, which are due by *cuſtom* and *uſage* in ſatisfaction for tythes; for which ſatisfaction, or *modus decimandi*, the parſon may ſue in court chriſtian, and is warranted by this act: for the rule is, that the

modus

modus is to be fued for in the *eccleſiaſtical* court, as well as the very tythe; and if it be allowed between the parties, they ſhall proceed there; but if the cuſtom be denied, it muſt be tried at the *common law*; and if it be found for cuſtom, then a conſultation muſt go; otherwiſe the prohibition ſtands. The like is affirmed in caſe a jury, upon an iſſue joined in a prohibition on a *modus decimandi*, find a different *modus*: ſince a *modus* is found, they ſhall not have conſultation.

The ground why the court of *common law* prohibits the *ſpiritual court* from trying of *moduſes* are, that whereas every *modus* is *leſs than the real value*, the rule of the common law is, that *leſs than the real value ſhall not be taken*, and that a cuſtom to the contrary is void; and that the *eccleſiaſtical* and *temporal* laws differ in the *times of limitations*; forty years making a good cuſtom with the firſt; whereas, by the ſecond, it muſt be beyond the time of memory. Gibſ. Cod. 691.

It has been held, that though the general rule of the common law is not to admit *leſs than the real value*, yet there are ſeveral exceptions, as in caſes of *perſonal* and *ſmall* tythe; in which cuſtomary payments are allowed, without breach of conſcience; the ſpiritual courts have commonly allowed pleas of *modus decimandi*, and are ready to allow them; that the *averment* in the prohibition is not that they do take cognizance, but that the plea hath been offered and refuſed; which ſuppoſes, that if the plea be admitted, the prohibition ought not to go; that accordingly it hath been affirmed by Doderidge and others, that they may as well try the *modus* as the right of tythes, and that prohibition is not to be granted till the ſpiritual court either refuſe to admit the plea, or proceed to try it by methods different from the rule of the temporal law, as to the time of limitation, or number of witneſſes, or the like. Lord Coke contended for the contrary doctrine; it was declared by Keling and Twiſden, 20 *Car.* 2. in the caſe of the Biſhop of Lincoln againſt Smith, that in caſe of one libel for a *modus decimandi*, if the ſpiritual court allow the plea, they may try it; and Coke's opinion againſt trying *penſions* claimed by *preſcription* in the ſpiritual court, they ſaid, was not warranted by the books. Gibſ. Cod. 691. Still. Eccleſ. 311.

By

Stat. 9 Edw. 2. By ſtatute of *Articuli Cleri*, 9 *Edw.* 2. ſtat. 1. cap. 1. "Whereas laymen do purchaſe prohibitions generally "upon tythes, obventions, oblations, mortuaries; the "King doth anſwer to this article, that in tythes, obla- "tions, obventions, mortuaries, when they are propound- "ed under theſe names) the King's prohibition ſhall hold "no place, although for the long withholding of the ſame "the money may be eſteemed a ſum certain. But if a "clerk, or a religious man, do ſell his tythes, being ga- "thered in his barn, or otherwiſe, to any man for money, "if the money be demanded before a ſpiritual judge, the "King's prohibition ſhall lie; for by the ſale the ſpiri- "tual goods are made temporal, and the tythes turned "into chattels."

Stat. 18 Edw. 3. By ſtatute 13 *Edw.* 4. ſtat. 3. cap. 7. "Whereas writs "of *ſcire facias* have been granted to wan prelates, reli- "gious, and other clerks, to anſwer *diſmes* in our chan- "cery, and to ſhew if they have any thing, or can any "thing ſay, wherefore ſuch *diſmes* ought not to be re- "ſtored to the ſaid demandants, and to anſwer as well to "us as to the party, to ſuch *diſmes*; ſuch writs from hence- "forth ſhall not be granted, and the proceſs hanging on "ſuch writs ſhall be anulled and repealed, and the parties "diſmiſſed from the ſecular judges of ſuch manner of "pleas."

Terms of Law. Article *Scire* and *Fieri Facias.* *Writs of ſcire facias.*] This is a writ where one hath recovered debts or damages in the King's courts, and ſues not for execution within a *year* and a *day*; after which he ſhall have this writ to warn the party; who, coming not, or ſaying nothing to ſtay execution, a writ of *fieri facias* goes, commanding the ſheriff to levy the debts or damage of his goods.

Inſt. 640. *To warn prelates, religious, and other clerks.*] This *ſcire facias* was not brought againſt the poſſeſſors of the land for ſubſtraction of tythes, but againſt the prelates or other clerks, which took the tythes after they were ſevered.—Commiſſions out of the Chancery were directed to certain perſons, giving them authority to enquire whether ſuch a ſpiritual perſon ought to have tythes of ſuch lands; whereupon inquiſitions were taken and returned: and if it were found for the ſpiritual perſon, upon this record, he might have a *ſcire facias* againſt any prelate, religious, or other clerk, that took them after ſeverance.

By

By ſtat. 1 *Rich.* 2. c. 13. " The prelates and clergy of 1 Rich 2. c. 13.
" this realm do greatly complain them, for that the people
" of holy church, purſuing in the ſpiritual court for their
" tythes and their other things, which of right ought, and
" of old times were wont to pertain to the ſame ſpiritual
" court; and that the judges of the holy church having
" cognizance in ſuch cauſes, and other perſons thereof
" meddling according to the law, be maliciouſly and un-
" duly for this cauſe indicted, impriſoned, and by the ſe-
" cular power horribly oppreſſed, and alſo inforced with
" violence, by oaths and grievous obligations; and many
" other means unduly compelled to deſiſt and ceaſe utterly
" of the things aforeſaid, againſt the liberties and franchiſes
" of holy church: wherefore it is aſſented, that all ſuch
" obligations made or to be made by *dureſs* or violence,
" ſhall be of no value. And as to thoſe that by malice
" do procure ſuch indictments, and to be the ſame indic-
" tors, after the ſame indictees be ſo acquitted, ſuch pro-
" curers ſhall ſuffer a year's impriſonment, and reſtore to
" the parties their damages, and ſhall nevertheleſs make a
" grievous fine unto the king. And the juſtices of aſſize,
" or other juſtices, before whom ſuch indictees ſhall be
" acquit, ſhall have power to enquire of ſuch procurers
" and indictees, and duly to puniſh them according to
" their deſert."

By ſtatute 1 *Rich.* 2. c. 14. "At what time that any 1 Rich. 2. c. 14.
" perſon of the holy church be drawn in plea in the *ſecu-*
" *lar court* for his own tythes, taken by the name of
" goods taken away; and he which is ſo drawn in plea
" makes an exception, or alleges that the ſubſtance
" and ſuit of the buſineſs is only upon tythes due of right,
" and of poſſeſſion to his church or other his benefice:
" In ſuch caſe, the general averment ſhall not be taken,
" without ſhewing ſpecially how the ſame was his *lay*
" *chattel.*"

By the 27 *Hen.* 8. c. 20. " All ſubjects of this realm, ac-
" cording to the *eccleſiaſtical* laws and ordinances of the
" church of England, and after the laudable uſes and cuſ-
" toms of the pariſh or other place where he dwells or oc-
" cupies, ſhall yield and pay his tythes and offerings, and
" other duties of holy church; and that for ſuch ſubſtrac-
" tions of any the ſaid tythes and offerings, or other du-
" ties, the parſon, vicar, curate, or other party in that be-
" half

" half grieved, may, by due proceſs of the King's eccle-
" ſiaſtical laws of the church of England, convene the
" perſon offending before his ordinary, or other competent
" judge of this realm, having authority to hear and deter-
" mine the right of tythes, as alſo to compel the ſame
" perſon offending to do and yield his duty in that behalf:
" and in caſe the ordinary of the dioceſe, or his commiſ-
" ſary, or the archdeacon, or his official, or any other
" competent judge aforeſaid, for any contempt, contumacy,
" diſobedience, or other miſdemeanor of the party defen-
" dant, ſhall make information and requeſt to any of the
" King's moſt honourable council, or to the juſtices of
" the peace of the ſhire where ſuch offender dwells, to aſ-
" ſiſt and aid the ſame ordinary, commiſſary, archdeacon,
" official or judge, to order or reform any ſuch perſon in
" any cauſe before rehearſed; that then he of the King's
" ſaid honourable council, or ſuch two juſtices of the
" peace *(whereof one to be of the quorum)*, to whom ſuch
" information or requeſt ſhall be made, ſhall have power
" to attach, or cauſe to be attached, the perſon againſt
" whom ſuch information or requeſt ſhall be made, and
" to commit him to *ward*, there to remain without *bail*
" or *mainprize*, until he ſhall have found ſufficient ſurety
" to be bound by recognizance, or otherwiſe before the
" King's ſaid counſellor, or juſtice of the peace, or any
" other like counſellor, or juſtice of the peace, to the
" uſe of our ſaid Lord the King to give due obedience to
" the proceſs, proceedings, decrees, and ſentences of the
" eccleſiaſtical court of this realm, wherein ſuch ſuit or
" matter for the premiſes ſhall depend, or be, and that
" every of the King's ſaid counſellors, or two juſtices of
" the peace, whereof the one to be of the *quorum*, as is
" aforeſaid, ſhall have power to take and record ſuch re-
" cognizance and obligations."

" PROVIDED, That this ſhall not extend to any inha-
" bitant of the city of *London*, concerning any tythe,
" offering, or other eccleſiaſtical duty; grown and due
" to be paid within the ſaid city; becauſe there is another
" order made for the payment of tythes and other duties
" within the ſaid city."

" PROVIDED ALSO, That all perſons, being parties
" to any ſuch ſuit, may have their lawful action, demand,
" or proſecution, appeals, prohibitions, and all other their
" lawful

" lawful defences and remedies in every ſuit, according to " the ſaid eccleſiaſtical laws, and laws and ſtatutes of this " realm, in as ample manner as they might have had if " this act had not been made." *ſ.* 2.

Shall have power to attach.] *Sanchee* and *others, quakers*, were cited into the eccleſiaſtical court, to anſwer there upon their ſolemn affirmation, &c. concerning tythes withheld by them from the parſon of the pariſh, and for not anſwering, the commiſſary, according to ſtatute 27 *H.* 8. *cap.* 20. certifies their contumacy to two juſtices of peace, by whoſe warrant they were ſeized, and committed to priſon; and being brought by *habeas corpus* into the King's Bench, it was moved, that they might be diſcharged, becauſe the new act concerning the affirmation of quakers gives the parſon a remedy to recover tythes by diſtreſs, by virtue of a warrant of a juſtice of peace: then where a ſtatute gives remedy, the juriſdiction of the ſpiritual court is taken away, unleſs it be ſaved by the ſame ſtatute. 5 *Co.* 73. 6 *Jones*, 320. ſtatutes were cited, where the juriſdiction of the ſpiritual court was ſaved, as 23 *Eliz.* cap. 1. 1 *Eliz.* cap. 2. In the ſame manner in ſtatute againſt *uſury*, 3 *Inſt.* 152. 2 *Inſt.* 657. and from thence it was inferred, that it was the opinion of thoſe parliaments, that the *ſpiritual juriſdiction* would have been taken away by theſe acts, if it had not been ſaved by them. *Per curiam*, This laſt act ſeems to be only an accumulative remedy, and not to repeal the act of *Hen.* 8. In many caſes the common law and eccleſiaſtical courts have a concurrent juriſdiction; as if a penſion be payable out of a parſonage by *preſcription*, the remedy for this is either in the *ſpiritual court*, or *annuity* lies for it at *common law*; though Coke ſays the contrary in 2 *Inſt.* in his Comment on *ſtatute de circumſpecte agatis*. But where the nature of the offence is altered by a ſtatute, and a new penalty inflicted, then, after the party has been tried at common law, and condemned, the eccleſiaſtical court ſhall not proceed againſt him. As if a man be convict at common law for having two wives, or hath been adjudged the reputed father of a baſtard ſon, &c. *ſ.* 1.

Exception was taken to the return, becauſe it is ſaid, that *Sanchee*, &c. were impriſoned for contempt in a ſuit for detention of tythes or other eccleſiaſtical duties; and it ought to appear for which the ſuit was ſpecially. For

Ld. Raym. 323. Hil. 9. Will. 3.

though

though the ſtatute that gives this remedy *is in general words* yet, in the return, the cauſe of impriſonment ought to be certainly expreſſed, to the end that it may appear to the court that it was an *eccleſiaſtical duty*, for which they are impriſoned. And of this opinion was the whole court, and therefore the quakers were diſcharged out of cuſtody.

32 H. 8. cap. 7. ſect. 1. and 2.

By ſtatute 32 *H.* 8. c. 7. ſect. 1, 2. (which was alſo made upon occaſion of the diſſolution of monaſteries, and which was chiefly intended to enable laymen, that, by the diſſolution, has eſtates or intereſts in parſonages, or vicarage impropriate, or otherwiſe, in tythes, to ſue for ſubſtraction of tythes in the eccleſiaſtical courts,) "All "perſons of this realm, of what eſtate, degree, or con- "dition ſoever they be, ſhall fully, truly, and effectually "divide, ſet out, yield, or pay, all and ſingular tythes and "offerings aforeſaid, according to the lawful cuſtoms "and uſages of pariſhes and places, where ſuch tythes "or duties ſhall ariſe or become due; and if any perſon "of his ungodly and perverſe will, ſhall detain and with- "hold any of the ſaid tythes or offerings, or any part "thereof, then the perſon or perſons, being eccleſiaſtical "or lay, having cauſe to demand the ſaid tythes or of- "ferings, being thereby wronged or grieved, ſhall and "may convene the perſon ſo offending, before the ordi- "nary, his commiſſary, or the competent miniſter or "lawful judge of the place where ſuch wrong ſhall be "done, according to the eccleſiaſtical laws; and in every "ſuch caſe or matter of ſuit, the ſame ordinary or other "judge, having the parties or their lawful procurators "before him, ſhall proceed to the examination, hearing, "and determination of every ſuch cauſe or matter, or- "dinarily or ſummarily, according to the courſe and the "proceſs of the ſaid eccleſiaſtical laws; and thereupon "give ſentence accordingly."

Every perſon to pay tythes according to cuſtom of the pariſh.

"And if any of the parties ſhall appeal from the ſen- "tence, order, and definitive judgment of the ſaid ordi- "nary, or other competent judge as aforeſaid, then the "ſame judge ſhall, upon ſuch appellation made, adjudge "to the other party the reaſonable coſts of his ſuit there- "in before expounded; and ſhall compel the ſame party "appellant to ſatisfy and pay the ſame coſts ſo adjudged, "by compulſory proceſs and cenſures of the ſaid laws "eccleſiaſtical;

" eccleſiaſtical; taking ſurety of the other party to whom " ſuch coſts ſhall be adjudged and paid, to reſtore the " ſame coſts to the party appellant, if afterwards the " principal cauſe of that ſuit of appeal ſhall be adjudged " againſt the ſame party to whom the ſame coſts ſhall " be yielded: and ſo every ordinary or other competent " judge *eccleſiaſtical* ſhall adjudge coſts to the other party, " upon every appeal to be made in a ſuit or cauſe of ſub- " ſtraction or detention of any tythes or offerings, or in " any other ſuit to be made concerning the duty of ſuch " tythes or offerings." *ſ.* 3.

" And if any perſon, after ſuch ſentence definitive " given againſt him, ſhall obſtinately and wilfully refuſe " to pay his tythes or duties, or ſuch ſums of money ſo " adjudged, wherein he ſhall be condemned for the ſame; " it ſhall be lawful for two juſtices of the peace for the " ſame ſhire, whereof one to be of the *quorum*, upon " information, certificate or complaint to them made in " writing by the ſaid *eccleſiaſtical* judge that gave the ſame " ſentence, to cauſe the ſame party ſo refuſing to be at- " tached and committed to the next gaol, and there to " remain without *bail* or *mainprize*, till he ſhall have " found ſufficient ſureties, to be bound by recognizance " or otherwiſe, before the ſame juſtices, to the uſe of our " Lord the King, to perform the ſaid definitive ſentence " and judgment." *ſ.* 4.

" PROVIDED, That no perſon ſhall be ſued, or other- " wiſe compelled to pay any tythes, for any manors, " lands, tenements, or other hereditaments, which by " the laws or ſtatutes of this realm are diſcharged, or not " chargeable with the payment of any ſuch tythes." *ſ.* 5.

" PROVIDED ALSO, That this ſhall not in any wiſe " bind the inhabitants of the city of London, and ſuburbs " of the ſame, to pay their tythes and offerings within " the ſame city and ſuburbs, otherwiſe than they ought " to have done before." *ſ.* 6.

" And in all caſes where any perſon ſhall have any " eſtate of inheritance, freehold, term, right or intereſt " in any parſonage, vicarage, portion, penſion, tythes, " oblations, or other *eccleſiaſtical* or *ſpiritual* profits, " which ſhall be made *temporal*, or admitted to be in " *temporal* hands, and *lay* uſes and profits by the laws of

" the

" the ſtatutes of this realm, ſhall be diſſeiſed, deforced, " wronged, or otherwiſe kept or put from their lawful " inheritance, eſtate, ſeiſin, poſſeſſion, occupation, term, " right or intereſt therein, by any other perſon claiming " to have intereſt in, or title to the ſame; the perſon ſo " diſſeiſed, deforced, or wrongfully kept or put out, his " heirs, his wife, and ſuch other to whom ſuch injury " and wrong ſhall be done, may have their remedy in " the King's temporal courts, or other temporal courts, " as the caſe ſhall require, for the recovery or obtaining " of the ſame, by writs original of *præcipe quod reddat*, " aſſize, of *novel diſſeiſin*, *mordanceſtor*, *quod ei deforceat*, " writs of dower, or other writs original, as the caſe ſhall " require, to be deviſed and granted in the King's court " of *Chancery*, in like manner and form as they might " have had for lands, tenements, or other hereditaments, " in ſuch manner to be demanded; and writs of *covenants*, " and other writs for fines to be levied, and all other aſ- " ſurances to be had of the ſame, ſhall be granted in the " ſaid *Chancery*, according as hath been uſed for fines to " be levied, and aſſurance to be had of lands, tenements, " or other hereditaments." *f.* 7.

" PROVIDED, That this ſhall not give any remedy, " cauſe of action or ſuit, in the courts *temporal*, againſt " any perſon who ſhall refuſe to ſet out his tythes, or " ſhall withhold or refuſe to pay his tythes or offerings; " but that in all ſuch caſes, the party being *eccleſiaſtical* " or *lay*, having cauſe to demand, or have the ſaid tythes " or offerings, and thereby wronged or grieved, ſhall have " his remedy for the ſame in the *ſpiritual* courts, accord- " ing to the ordinance in the firſt part of this act mentioned, " and not otherwiſe." *f.* 8.

2 and 3 Edw. 6. cap. 13. By ſtat. 2 and 3 *Edw.* 6. *c.* 13. the aforeſaid acts of 27 *H.* 8. *c.* 20. and 32 *H.* 8. *c.* 7. ſhall ſtand in full force: and moreover, *it is further enacted* as followeth, " All perſons ſhall truly and juſtly, without fraud or " guile, divide, ſet out, yield and pay all manner of the " *predial* tythes, in their proper kind, as they riſe and " happen, in ſuch manner and form as hath been of right " yielded and paid within *forty years* next before the mak- " ing of this act, or of right or cuſtom, ought to have " been paid; and no perſon ſhall take or carry away any " ſuch or like tythes, which have been yielded or paid,

" within

" within the ſaid *forty years*, or of right ought to have " been paid, in the place or places tytheable of the ſame, " before he hath juſtly divided or ſet forth the tythe there- " of, the *tenth part* of the ſame, or otherwiſe agreed for " the ſame tythes with parſon, vicar, or owner, propri- " etary, or farmer of the ſame tythes, under the pain of " forfeiture of *treble value* of the tythes ſo taken or car- " ried away." *ſ.* 1.

" At all times whenſoever, and as often as any *predial* " tythes ſhall be due at the tything of the ſame, it ſhall " be lawful to every party to whom any of the ſaid " tythes ought to be paid, or his deputy, or ſervant, to " view and ſee their ſaid tythes to be juſtly and truly ſet " forth and ſevered from the *nine parts*; and the ſame " quietly to take and carry away: and if any perſon " carry away his corn or hay, or his other *predial* tythes; " before the tythe thereof be ſet forth, or willingly with- " draw his tythes of the ſame, or of ſuch other things " whereof *predial* tythes ought to be paid; or do ſtop or " let the parſon, vicar, proprietor, owner, or other their " deputies or farmers, to view, take, and carry away " their tythes, as is above ſaid; by reaſon whereof the " ſaid tythe or tenth is loſt, impaired, or hurt; then, upon " due proof thereof being made before the *ſpiritual* judge, " or any other judge to whom heretofore he might have " made complaint, the party ſo carrying away, with- " drawing, letting, or ſtopping, ſhall pay the *double* value " of the tenth or tythe ſo taking, loſt, withdrawn or " carried away, over and beſides the coſts, charges and ex- " pences of the ſuit, in the ſame: the ſame to be recovered " before the *eccleſiaſtical* judge, according to the King's " *eccleſiaſtical laws*." *ſ.* 2.

" PROVIDED, That no perſon ſhall be ſued, or other- " wiſe compelled to yield, give, or pay, any manner of " tythes, for any manors, lands, tenements, or heredita- " ments, which by the laws and ſtatutes of this realm, or " by any privilege or preſcription, are not chargeable " with the payment of any ſuch tythes, or that be diſ- " charged by any compoſition real." *ſ.* 3.

" If any perſon do ſubtract or withdraw any manner of " tythes, obventions, profits, commodities, or other du- " ties (before mentioned), or any part of them, contrary " to the true meaning of this act, or of any other act

" heretofore made, he may be convented and ſued in the " King's *eccleſiaſtical court*, by the party from whom the " ſame ſhall be ſubtracted or withdrawn; to the intent " the King's *eccleſiaſtical* judge may hear and determine " the ſame, according to the King's *eccleſiaſtical* laws: " and it ſhall not be lawful to the parſon, vicar, pro- " prietor, owner, or other their farmers or deputies, con- " trary to this act, to convent or ſue ſuch withholder of " tythes, obventions, and other duties aforeſaid, before " any other judge than *eccleſiaſtical*. And if any arch- " biſhop, biſhop, chancellor, or other judge *eccleſiaſtical*, " give any ſentence in the aforeſaid cauſes of tythes, " obventions, profits, emoluments, and other duties afore- " ſaid (and no appeal or prohibition hanging), and the party " condemned do not obey the ſaid ſentence, it ſhall be " lawful to every ſuch judge eccleſiaſtical to excommu- " nicate the ſaid party, ſo diſobeying: In which ſentence " of excommunication, if the ſaid party excommunicate " wilfully ſtand, and endure ſtill excommunicate, by the " ſpace of *forty days* next after, upon denunciation and " publication thereof in the pariſh church, or the place " or pariſh where the party ſo excommunicated is dwell- " ing, or moſt abiding, the ſaid judge *eccleſiaſtical* may " then, at his pleaſure, ſignify to the King in *Chancery*, " of the ſtate and condition of the ſaid party ſo excommu- " nicate, and thereupon require proceſs *de excommunicato* " *capiendo*, to be awarded againſt every perſon as hath " been ſo excommunicate." *ſ.* 13.

" And if the party in ſuch caſe ſhall ſue for a prohi- " bition, he ſhall, before any prohibition granted, deliver " to ſome of the juſtices or judges of the court where he " demandeth prohibition, a true copy of the libel, ſub- " ſcribed by his hand; and under the copy of the ſaid " libel ſhall be written the ſuggeſtion whereof he de- " mandeth the prohibition: and in caſe the ſaid ſuggeſ- " tion, by two honeſt and ſufficient witneſſes at leaſt, be " not proved true in the court where the ſaid prohibition " ſhall be ſo granted, within ſix months next following " after ſaid prohibition ſhall be ſo granted and awarded; " then the party that is letted or hindered of his ſuit in " the *eccleſiaſtical court* by ſuch prohibition ſhall, upon " his requeſt and ſuit, without delay, have a conſultation " granted by the ſaid court; and ſhall alſo recover double

" coſts

" coſts and damages, againſt the party that ſo purſued " the prohibition, to be aſſigned or aſſeſſed by the ſame " court; for which coſts and damages the party may have " an action of debt." *ſ.* 14.

" PROVIDED, That nothing herein ſhall extend to " give any miniſter or judge eccleſiaſtical, any juriſdiction " to hold plea of any matter, cauſe, or thing, contrary " to the ſtatute of *Weſtminſter*, 2 *c.* 5. the ſtatutes of " *articuli cleri*, *circumſpecte agatis*, *ſylva cædua*, the *trea-* " *tiſe de regia prohibitione*, nor againſt the ſtatute of 1. " *Edw.* 3. *c.* 10. nor to hold plea in any matter whereof " the King's court of right ought to have juriſdiction." *ſ.* 15.

Truly and juſtly, without fraud or guile.] See *ſect.* 1. of the preceding ſtatute. In the caſe of *Heale* and *Sprat*, *Tri.* 44 *Eliz.* in a prohibition; the caſe was, *Heale* did ſet out his *predial* tythes, and divided them juſtly from the nine parts, and ſoon after carried away the ſame. *Sprat* ſued for a ſubtraction of the ſame in the *eccleſiaſtical court*. *Heale* pleaded that he had ſet them out, as above; whereupon *Sprat* ſaid, that preſently after his ſetting out, he carried the ſame away, to the defrauding of the ſtatute. *Adjudged*, that this was *fraud* and *guile* within this act; albeit he did juſtly divide the ſame within the letter of this law. It was further reſolved, that if the owner of the corn before ſeverance grant the ſame to another, of intent that the grantee ſhould take away the ſame, to the end to defraud the parſon of his tythe, this is *fraud* and *guile* within this ſtatute. 2 Inſt. 649.

Predial tythes.] This branch of the ſtat. extends only to *predial tythes*: thus, in the caſe of *Boot* and *Southraie*, *E.* 1. in *debt* on this ſtatute, by the parſon of the church, for not ſetting forth of the tythes of *cheeſe*, *calves*, *lambs*, *cherries*, and *pears*, to have the *treble value*; the defendant pleaded *nihil debet*, and it was found againſt him; and it was moved in arreſt of judgment, that the ſaid tythes, of *cheeſe* or *calves*, and *lambs*, were not *predial tythes*, and therefore not within this branch of the ſtatute; and this act is *penal*, and ſhall not be taken by *equity*; which was allowed by the whole court. Vide Supra.

Within forty years next before the making of this act.] This time of *forty years* is here ſet down, becauſe *forty* 2 Inſt. 646. 1 Ought. 263.

years in the *eccleſiaſtical court* about tythes make a *preſcription.*

2 Inſt. 650. *Or of right or cuſtom ought to have been paid.*] The ſenſe of theſe words of right ought to have been paid, is of tythes to be yielded in *ſpecie* within *forty years*; and the ſenſe of the words of right or cuſtom is, by rightful cuſtom, *de modo decimandi.*

1 Inſt. 159. 2 Inſt. 650. *Under the pain of forfeiture of treble value of the tythes ſo taken or carried away.*] This branch doth not give the forfeiture to any perſon in certain; and therefore it was pretended, that the forfeiture ſhould be given to the King; and the Attorney-General, *Hil.* 29 *Eliz.* did exhibit an information in the *Exchequer* againſt one *Wood*, a pariſhioner of *Jelington*, in the county of *Cambridge*, for this *treble* forfeiture, for carrying away his tythes before they were juſtly divided. The defendant pleaded *not guilty*; and was found guilty; and in arreſt of judgment it was moved, that in this caſe the forfeiture was not given to the King; for that the words of the act be, under the pain of forfeiture of *treble value* of the tythe ſo taken away: and whenſoever a forfeiture is given againſt him, that doth diſpoſſeſs the owner of his property, as here he doth of his tythes, there the forfeiture is given to the party grieved or diſpoſſeſſed; and the rather, for that this is an additional law, and made for the benefit of the proprietor of the tythes; and ſo adjudged by *Manwood* and the whole court of *Exchequer*; and this was the firſt leading caſe, that it was adjudged upon this point; and ever ſince it hath been received for law, that the party intereſted in the tythes ſhall in an action of *debt* recover the *treble value.*

Gibſ. Cod. 679. 1 Vern. 60. The *treble value* only, and *not the tythes themſelves, nor any ſatisfaction for them*, may be recovered in the *temporal court:* that being out of the juriſdiction of thoſe courts, and wholly in the *ſpiritual court*; which is the reaſon why in all ſuits upon this ſtatute the action is not laid for ſubtraction of tythes, but for a contempt of the ſtatute of not ſetting them out; and being a contempt, the action dies with him who committed the contempt, and doth not lie againſt his executor.

Watſ. c. 58. Held, that an action grounded on this ſtatute for not ſetting forth of tythes, is not within the ſtatute of *limitations*; that, not extending to actions grounded on acts of

of parliament; therefore the plaintiff is not by law confined to *ſix years*, or to any other time certain, within which to bring his action.

Determined, that this ſtatute, which gives *treble damages*, does not allow the jury to give other damages.— No coſts being given by the ſtatute; the jury can aſſeſs no coſts. Mo. 915.

Neither *damages* nor *coſts* can be recovered with the *treble value*, becauſe the ſtatute has not expreſsly given them, except that by the ſtatute 8 and 9 *W. c.* 11, IT IS ENACTED, That in all actions of *debt* on the ſtatute for not ſetting forth of tythes, wherein the *ſingle value* or *damage* found by the jury ſhall not exceed the ſum of *twenty nobles*, the plaintiff obtaining judgment, or an award of execution, after plea pleaded, or demurrer joined therein, ſhall recover his *coſts of ſuit*; and if the plaintiff ſhall become *nonſuit*, or ſuffer a *diſcontinuance*, or a *verdict* ſhall paſs againſt him, the defendant ſhall recover his coſts.

Shall pay the double value] The reaſon why only the *double value* is, by this branch of the ſtatute, to be recovered in the *eccleſiaſtical* court, where, by the former branch, the parſon at the *common law* ſhall recover the *treble*, is, that in the eccleſiaſtical court he ſhall recover the tythes themſelves; and therefore the value recovered in the eccleſiaſtical court is equivalent with the *treble* forfeiture at common law. 2 Inſt. 650.

Over and beſides the coſts, charges, and expences.] So that the charges in the eccleſiaſtical court is more advantageous than the ſuit for the *treble* forfeiture at the common law. At the common law he ſhall recover no coſts; but he ſhall recover in the eccleſiaſtical court, his *coſts*, *charges*, and *expences*. 2 Inſt. 651.

May be convented.] In the caſe of Machin and Molton, *Eaſt.* 11 *W.* 3. on motion for the diſcharge of a rule, by which prohibition was granted, unleſs cauſe ſhewed, to the conſiſtory court of the Archbiſhop of York; where Molton, rector of the church of South Collingham, in the dioceſe of York, preferred a libel againſt Machin for ſubtraction of tythes; and the motion for the prohibition was grounded on a ſuggeſtion that Machin lived within the dioceſe of Lincoln, and therefore ought not to be cited out of the dioceſe where he lived, by ſtatute 23 *H.* 8. *c.* 9. the cauſe which was ſhewed to the court to diſcharge Lord Raym. 452 534.

the rule was, Machin had lands within the dioceſe of York, namely, in the pariſh of South Collingham: for the tythes of corn growing on which lands, Molton libelled in the conſiſtory court of York; and when the citation was ſerved Machin was there, though he lived generally within the dioceſe of Lincoln. Holt, Chief Juſtice, held, That if a man lives within the dioceſe of *A.* and occupies lands in the dioceſe of *B*, if he ſubtracts tythes in *B*, he may be cited and ſued there; and is not within the ſaid ſtatute; for when he occupies lands in *B*, that makes him an inhabitant there, and out of the intent of the ſtatute; and by ſtatute 32 *H.* 8. *c.* 7. *ſect.* 2. the ſuit for withholding of tythes in expreſs words is appointed to be before the ordinary of the place where the wrong was done.

2 Inſt. 662. *By two honeſt and ſufficient witneſſes at leaſt.*] This clauſe was made in favour of the clergy, for proof to be made by witneſſes, which they had not at the common law. If the ſuggeſtion be in the *negative*, as if the proprietary of a parſonage impropriate ſue for tythes, and the cauſe of the ſuggeſtion be, that the parſonage is not impropriate; or if a parſon ſue for tythes of lands in his pariſh, and the party ſue for a prohibition; for that the land lies not in that pariſh, or that the parſon who ſues for tythes was not inducted, or any the like cauſe, in the negative, or any matter of fact, he ſhall not produce any witneſſes by force of this branch, becauſe a negative cannot be proved; and therefore a prohibition upon cauſes in the negative remains as it was at the common law.

Gibſ. 699. *Proved true*] It is ſufficient in this caſe that enough is proved on which to ground a prohibition, though the ſuggeſtion be not ſhewn to be ſtrictly and wholly true. In a caſe where the ſuggeſtion was for *twenty acres of paſture*, and as many acres of *wood* in lieu of tythes, and proof was only made of the wood; or where the ſuggeſtion was for *wool and lamb*, and the witneſſes only proved as to the *lamb*; or for a *hundred acres*, when they were only *ſixty*; or for *twenty ſhillings* by way of *modus*, where the ſum was *forty ſhillings*: in theſe caſes, the proofs were adjudged to be ſufficient, becauſe enough was proved to ſhew that the court chriſtian ought not to hold plea thereof. If proof is neither made of the *modus laid*, nor of any other *modus*, then the ſuggeſtion is not proved.

Within

Within ſix months.] If there is no certainty in the firſt proof, it cannot be ſupplied by good proof after the ſix months; but if good proof is made within the time, it may be certified after the time. Gibſ. 700.

Six months.] That is, *ſix calendar months*; and not to be reckoned by *twenty-eight days* to the month. 2 Salk. 554.

Six months next following.] Which muſt be computed from the *teſte* of the writ, and not *ſix months* in the term time only, but the vacation ſhall be included as part of the time. 2 Salk. 554. Ld. Raym. 1172

Have a conſultation granted.] After which the party may have a new prohibition on the ſame libel; for ſtatute 50 *Edw.* 3. againſt prohibition after conſultation extends not to thoſe conſultations which are granted on the matter of the ſuggeſtion. Gibſ. 700.

By ſtat. 7 and 8 *W.* 3. *c.* 6. *ſect.* 6. For the more eaſy and effectual recovery of *ſmall tythes*, and the value of them, where the ſame ſhall be unduly ſubtracted and detained, where the ſame do not amount to above the *yearly value of forty ſhillings* from any one perſon, it is enacted, "That all perſons ſhall well and truly ſet out "and pay all and ſingular the tythes, commonly called "*ſmall tythes*, and compoſitions and agreements for the "ſame, with all offerings, oblations, and obventions, to "the ſeveral rectors, vicars, and other perſons to whom "they ſhall be due in their ſeveral pariſhes, according to "the rights, cuſtoms, and preſcriptions commonly uſed "within the ſaid pariſhes reſpectively; and if any perſon "ſhall ſubtract or withdraw, or any ways fail in the true "payment of ſuch ſmall tythes, offerings, oblations, ob-"ventions, or compoſitions, by the ſpace of twenty days "at moſt after demand thereof, it ſhall be lawful for the "perſon to whom the ſame ſhall be due to make his "complaint in writing to two or more juſtices of the peace "within that county, place, or diviſion, where the ſame "ſhall grow due; neither of which juſtices is to be patron "of the church or chapel whence the ſaid tythes ſhall "ariſe, nor any ways intereſted in ſuch tythes, offer-"ings, oblations, obventions, or compoſitions aforeſaid." 7 & 8 W. 3. cap. 6.

"And on ſuch complaint the ſaid juſtice ſhall ſummon "in writing under their hands and ſeals, by reaſonable "warning, every ſuch perſon againſt whom ſuch com-"plaint ſhall be made; and after his appearance, or upon

"default of appearance, the ſaid warning or ſummons "being proved before them upon oath, the ſaid juſtices "ſhall proceed to hear and determine the ſaid complaint; "and upon the proofs, evidences, and teſtimonies pro- "duced before them in writing under their hands and ſeals "adjudge the caſe, and give ſuch reaſonable allowance "and compenſation for ſuch tythes, oblations, and com- "poſitions ſo ſubtracted or withheld, as they ſhall judge "to be juſt and reaſonable, and all ſuch coſts and charges "not exceeding *ten ſhillings*, as upon the merits of the "cauſe ſhall appear juſt." *ſ.* 2.

27 Geo. 2. c. 20. "If any perſon ſhall refuſe or neglect, for the ſpace of "ten days after notice given, to pay or ſatisfy any ſuch "ſum of money, as upon ſuch complaint and proceeding "ſhall by two ſuch juſtices be adjudged as aforeſaid; in "every ſuch caſe, the conſtables and churchwardens of "the ſaid pariſh, or one of them, ſhall, by warrant under "the hands and ſeals of the ſaid juſtices to them directed, "diſtrain the goods and chattels of the party ſo refuſing "or neglecting as aforeſaid; and after detaining them, "(not leſs than *four days*, nor more than *eight*, by ſtat. "37 *Geo.* 2. *c.* 20.) in caſe the ſaid ſum adjudged, together "with reaſonable charges of making and detaining the ſaid "diſtreſs, be not tendered or paid by the ſaid party in the "mean time, ſhall make public ſale thereof, and pay to "the party complaining ſo much of the money ariſing by "ſuch ſale as may ſatisfy the ſaid ſums ſo adjudged, re- "taining to themſelves ſuch reaſonable charges for making "and keeping the ſaid diſtreſs as the ſaid juſtices ſhall think "fit; and alſo deducting their reaſonable charges of ſell- "ing the ſaid diſtreſs; returning the overplus (if any ſhall "be) to the owner upon demand." *ſ.* 3.

"And the ſaid juſtices ſhall have power to adminiſter "an oath." *ſ.* 4.

"PROVIDED, That this act ſhall not extend to any "tythes, oblations, payments, or obventions, within the "city of London, or liberties thereof; nor to any other "city or town-corporate where the ſame are ſettled by act "of parliament." *ſ.* 5.

"And no complaint ſhall be heard and determined by "the ſaid juſtices, unleſs the complaint ſhall be made "within *two years* next after the time that the ſame tythes,

"oblations,

"oblations, obventions, and compoſitions did become "due." *ſ.* 6.

"PROVIDED ALSO, That any perſon finding himſelf "aggrieved by any judgment to be given by ſuch two "juſtices, may appeal to the next general quarter-ſeſſions "to be held for that county, or other diviſion; and the "juſtices there ſhall proceed finally to hear and determine "the matter; and to reverſe the ſaid judgment, if they "ſhall ſee cauſe; and if they ſhall find cauſe to confirm "the ſaid judgment, they ſhall decree the ſame by order "of ſeſſions, and ſhall alſo proceed to give ſuch coſts "againſt the appellant, to be levied by diſtreſs and ſale of "the goods and chattels of the ſaid appellant, as to them "ſhall ſeem juſt and reaſonable; and no proceedings or "judgment had by virtue of this act, ſhall be removed or "ſuperſeded by any *writ of certiorari*, or other writ out "of his Majeſty's courts of Weſtminſter, or any other "court, unleſs the title of ſuch tythes, oblations, or ob-"ventions, ſhall be in queſtion." *ſ.* 7.

"PROVIDED, That where any perſon complained of "for ſubtracting or withholding any ſmall tythes, or other "duties aforeſaid, ſhall, before the juſtices to whom ſuch "complaint is made, inſiſt upon any preſcription, com-"poſition, or *modus decimandi*, agreement or title, where-"by he ought to be freed from payment of the ſaid tythes, "or other dues in queſtion, and deliver the ſame in writ-"ing to the ſaid juſtices, ſubſcribed by him, and ſhall "then give to the party complaining reaſonable and ſuffi-"cient ſecurity, to the ſatisfaction of the ſaid juſtices, to "pay all ſuch coſts and damages, as upon a trial at law "to be had for that purpoſe in any of his Majeſty's courts, "having cognizance of that matter, ſhall be given againſt "him, in caſe the ſaid preſcription, compoſition, or *modus* "*decimandi*, ſhall not, on the ſaid trial, be allowed; in "that caſe, the ſaid juſtices ſhall forbear to give any judg-"ment in the matter; and then, and in ſuch caſe, the "party complaining ſhall be at liberty to proſecute ſuch "perſon for his ſaid ſubtraction in any other court, "where he might have ſued before the making of this "act." *ſ.* 8.

"And

" And every perſon who ſhall, by virtue of this act, " obtain any judgment, or againſt whom any judgment " ſhall be obtained before any juſtices of the peace out of " ſeſſions for ſmall tythes, oblations, obventions, or com- " poſitions, ſhall cauſe, or procure the ſaid judgment to " be enrolled at the next general quarter-ſeſſions, to be " held for the ſaid county, or other diviſion; and the " clerk of the peace ſhall, upon tender thereof, inroll the " ſame; and ſhall not receive for the inrolment of any " one judgment any fee or reward exceeding *one ſhilling*; " and the judgment ſo inrolled, and ſatisfaction made by " paying the ſum adjudged, ſhall be a good bar to exclude " the ſaid rectors, vicars, and other perſons, from any " other remedy for the ſaid ſmall tythes, oblations, ob- " ventions, or compoſitions, for which the ſaid judgment " was obtained." *ſ.* 9.

" If any perſon, againſt whom ſuch judgment ſhall be " had, ſhall remove out of the county or other diviſion, " before the levying of the ſum adjudged, the juſtices who " made the judgment, or one of them, ſhall certify the " ſame, under hand and ſeal, to any juſtice of ſuch other " county or place wherein the ſaid perſon ſhall be an in- " habitant, who ſhall, by warrant under his hand and ſeal " to be directed to the conſtables or church-wardens of " the place, or one of them, levy the ſums ſo adjudged " to be levied upon the goods and chattels of ſuch perſon " as fully as the ſaid other juſtice might have done, if he " had not removed as aforeſaid." *ſ.* 10.

" And the juſtices, who ſhall hear and determine any " of the matters aforeſaid, ſhall have power to give coſts, " not exceeding ten ſhillings, to the party proſecuted, if " they ſhall find the complaint to be falſe and vexatious, " to be levied in manner and form aforeſaid." *ſ.* 12.

" And if any perſon ſhall be ſued for any thing done " in the execution of this act, and the plaintiff in ſuch " ſuit ſhall diſcontinue his action, or be nonſuit, or a " verdict paſs againſt him, ſuch perſon ſhall recover " double coſts." *ſ.* 13.

" PROVIDED, That any clerk, or other perſon, who " ſhall begin any ſuit for recovery of ſmall tythes, obla- " tions, or obventions, not exceeding the value of forty " ſhillings, in his Majeſty's court of Exchequer, or in any

" the

"the eccleſiaſtical courts, ſhall have no benefit by this "act for the ſame matter for which he hath ſo ſued." *ſ.* 14.

Complaint in writing.] *See ſect.* 1. *of the foregoing ſtatute.* Order for non-payment of ſmall tythes was quaſhed, becauſe ſaid only upon complaint *generally*; and the 7 & 8 *W.* 3. *c.* 6, requires the complaint to be in writing. Stran. 264.

By ſtat. 7 and 8 *W.* 3. *c.* 34. "Whereas by reaſon of "a pretended ſcruple of conſcience, quakers refuſe to pay "tythes and church-rates, it is enacted, That where any "quaker ſhall refuſe to pay or compound for his great or "ſmall tythes, or to pay any church-rates, it ſhall be "lawful for the two next juſtices of the peace of the ſame "county (other than ſuch juſtice as is patron of the "church or chapel, whence the ſaid tythes ſhall ariſe, or "any ways intereſted in the ſaid tythes), upon the com- "plaint of any parſon, vicar, farmer, or proprietor of "tythes, church-warden or church-wardens, who ought "to have, receive, or collect the ſame, by warrant under "their hands and ſeals, to convene before them ſuch qua- "ker or quakers neglecting or refuſing to pay or com- "pound for the ſame, and to examine upon oath (or af- "firmation, in caſe of the examination of a quaker) the "truth and juſtice of the ſaid complaint, and to aſcertain "and ſtate what is due and payable; and by order under "their hands and ſeals, to direct and appoint the payment "thereof, ſo as the ſum ordered do not exceed ten pounds; "and upon refuſal to pay according to ſuch orders, it ſhall "be lawful for any one of the ſaid juſtices, by warrant "under his hand and ſeal, to levy the ſame by diſtreſs and "ſale of the goods of ſuch offender, his executors or ad- "miniſtrators, rendering only the overplus to him or "them; the neceſſary charges of diſtraining being there- "out firſt deducted and allowed by the ſaid juſtice. And "any perſon finding himſelf aggrieved by any judgment "given by ſuch two juſtices, may appeal to the next gene- "ral quarter-ſeſſions to be held for the county, riding, city, "liberty, or town-corporate; and the juſtices there ſhall "proceed finally to hear and determine the matter, and to "reverſe the ſaid judgment, if they ſee cauſe; and if they "ſhall find cauſe to continue the ſaid judgment, they ſhall "then decree the ſame by order of ſeſſions, and ſhall Stat. 7 and 8 W. 3. cap. 34.

"alſo

" alſo proceed to give ſuch coſts againſt the appellant, to " be levied by diſtreſs and ſale of the goods and chattels of " the ſaid appellant, as to them ſhall ſeem juſt and rea- " ſonable; and no proceedings or judgment had by vir- " tue of this act ſhall be removed or ſuperſeded by any " *writ of certiorari*, or other writ out of his Majeſty's " courts at *Weſtminſter*, or any other court whatſoever, " unleſs the title of ſuch tythes ſhall be in queſtion."

" PROVIDED, That in caſe any ſuch appeal be made " as aforeſaid, no warrant of diſtreſs ſhall be granted until " after ſuch appeal be determined." *ſ.* 5.

Stat. 2 Geo. 1. ſtat. 2. cap. 6. ſect. 2.

By ſtat. 1 *Geo.* 1. *ſt.* 2. *c.* 6. *ſect.* 2. the like remedy ſhall be had againſt any quaker or quakers, for the recovery of any tythes or rates, or any cuſtomary or other rights, dues, or payments, belonging to any church or chapel, which of right by law and cuſtom ought to be paid, for the ſtipend or maintenance of any miniſter or curate officiating in church or chapel; and any two or more juſtices of the peace of the ſame county or place (other than ſuch juſtice as is patron of any ſuch church or chapel, or any ways intereſted in the ſaid tythes), upon complaint of any parſon, vicar, curate, farmer, or proprietor of ſuch tythes, or any church-warden or chapel-warden, or other perſon who ought to have, receive, or collect any ſuch tythes, rates, dues, or payments, as aforeſaid, are authorized and required to ſummon, in writing under their hands and ſeals, by reaſonable warning, ſuch quaker or quakers, againſt whom ſuch complaint ſhall be made; and after his or their appearance, or upon default of appearance, the ſaid warning or ſummons being proved before them upon oath, to proceed to hear and determine the ſaid complaint, and to make ſuch order therein as in he aforeſaid act is limited; and alſo to order ſuch coſts and charges as they ſhall think reaſonable, not exceeding *ten ſhillings*, as upon the merits of the cauſe ſhall appear juſt: which order ſhall and may be ſo executed, and on ſuch appeal may be reverſed or affirmed by the general quarter-ſeſſions, with ſuch coſts and remedy for the ſame; and ſhall not be removed into any other court, unleſs the titles of ſuch tythes, dues, or payments ſhall be in queſtion; in like manner as by the aforeſaid act is limited and provided.

By

By ſtat. 27 *G.* 2. *c.* 20. which directs in what manner diſtreſſes ſhall be made by juſtices of the peace, and which gives to the juſtices power to order the goods diſtrained to be kept for a certain time before they be ſold, and gives power alſo to the officers making the diſtreſs to deduct their reaſonable charges, it is provided, that the ſame ſhall not extend to alter any proviſions relating to diſtreſſes to be made for the payment of tythes and church-rates by the people called quakers, contained in ſtatutes 7 & 8 *W.* 3. *c.* 34. and ſtat. 1 *Geo.* 1. *ſt.* 2. *c.* 6. Stat 27 Geo. 2. c. 20.

Notwithſtanding all theſe ſtatutes, tythes (if of any conſiderable value) are now generally ſued for in the courts of equity by Engliſh bills, and for the moſt part in the Exchequer; but not upon the ſtatute for *treble* or *double* value: for there can be no ſuit in *equity* for the recovery of the *double* or *treble* value. Wood, b 2. c. 2. Will. 463.

If the incumbent dies, his executor may recover the tythes which became due in the teſtator's life-time; but he is not entitled to the *treble value* upon the ſtatute. 1 Vern. 60.

By ſtatute 11 *Geo.* 2. *c.* 19. *ſect.* 15. "Where any te- "nant for life ſhall happen to die *before*, or *on the day* on "which any rent was reſerved, or made payable, upon "any demiſe or leaſe of any lands, tenements, or heredi- "taments, which determined on the death of ſuch tenant "for life; the executors or adminiſtrators of ſuch tenant "for life ſhall and may, in an action on the caſe, recover "of and from ſuch under-tenant of ſuch lands, tenements, "or hereditaments, if ſuch tenant for life die on the day "on which the ſame was made payable, the whole, or if "before ſuch day, then a proportion of ſuch rent, ac- "cording to the time ſuch tenant for life lived, of the laſt "year, or quarter of a year, or other time in which the "ſaid rent was growing due as aforeſaid; making all juſt "allowances, for a proportionable part thereof reſpec- "tively." Stat. 11 Geo. 2. cap. 19. ſect. 15.

By ſtat. 5 *Geo.* 3. *c.* 17. intitled, An act to confirm all leaſes already made by Archbiſhops and Biſhops, and other eccleſiaſtical perſons, of tythes, and other incorporeal hereditaments, for one, two, or three lives, or twenty-one years; and to enable them to grant ſuch leaſes, and to bring actions of debt for recovery of rents reſerved and in arrear, on leaſes for life or lives. Stat. 5 Geo. 3. cap. 17.

"For

" For obviating all doubts, and enabling archbiſhops " and biſhops, maſter and fellows, or other heads and mem- " bers of colleges or halls, deans and chapters, precentors, " prebendaries, maſters and guardians of hoſpitals, and " other eccleſiaſtical perſons, to make valid leaſes of their " incorporeal hereditaments, and to recover the rent or " yearly ſum mentioned to be reſerved on any leaſes by " them already granted or to be granted, for any one, " two or three lives, as aforeſaid; and alſo to make good " and effectual all ſuch leaſes as have already been granted " by them: be it therefore enacted, &c. that all leaſes " for one, two, or three life or lives, or any term not " exceeding twenty-one years, already made and granted, " or which ſhall at any time from and after the paſſing this " act be made or granted, of any tythes, tolls, or other " incorporeal hereditaments, by any archbiſhop or biſhop, " maſter and fellows, or other head and members of col- " leges or halls, deans and chapters, precentors, preben- " daries, maſters and guardians of hoſpitals, and every " other perſon and perſons, who are enabled by the ſeve- " ral ſtatutes now in being, or any of them, to make any " leaſe or leaſes for one, two or three life or lives, or any " term or number of years, not exceeding twenty- " one, of any lands, tenements, or other corporeal here- " ditaments, ſhall be, and are hereby deemed and declared " to be, as good and effectual in law againſt ſuch arch- " biſhop, biſhop, maſter and fellows, or other heads and " members of colleges or halls, deans, and chapters, pre- " centors, prebendaries, maſters and guardians of hoſpi- " tals, and other perſons ſo granting the ſame, and their " ſucceſſors and every of them, to all intents and pur- " poſes, as any leaſe or leaſes already made, or to be made " by any ſuch archbiſhop or biſhop, maſter and fellows, " or other heads and members of colleges or halls, deans " and chapters, precentors, prebendaries, maſters and " guardians of hoſpitals, and other perſons having ſpiri- " tual promotion, of any lands or other corporeal hereditaments, now are, by virtue of the ſtatute of the thirty- " ſecond year of King Henry the Eighth, or any other " ſtatute now in being." *ſ.* 1.

" PROVIDED ALWAYS, that nothing herein contained " ſhall extend, or be conſtrued to extend, to enable any " maſter and fellows, or other heads and members of col-

" leges

" leges or halls, deans and chapters, precentors, preben-
" daries, maſters and guardians of hoſpitals, or other ec-
" cleſiaſtical perſons as aforeſaid, to grant leaſes for any
" longer or other terms than by the local ſtatutes of their
" ſeveral foundations they are now reſpectively enabled
" to do." *ſ.* 2.

" And in caſe the rents, yearly ſum or ſums, re-
" ſerved or made payable in or by any leaſe or leaſes,
" made by any archbiſhop, biſhop, &c. &c. ſhall be
" behind or unpaid by the ſpace of *twenty-eight days*
" next over or after any of the days whereon the ſame
" ſhall be reſerved and made payable; then, and ſo often,
" and from time to time, as it ſhall ſo happen, it ſhall
" and may be lawful for ſuch archbiſhop or biſhop, maſ-
" ter and fellows, &c. &c. or their executors, adminiſ-
" ſtrators, and ſucceſſors reſpectively, to bring actions of
" debt againſt the leſſee or leſſees, to whom any ſuch leaſe
" or leaſes, for life or lives, or years, now are, or here-
" after ſhall be made and granted to his, her, or their
" heirs, executors, adminiſtrators, or aſſigns, for reco-
" vering the rent or rents which ſhall be then due and in
" arrear, to any ſuch archbiſhop, biſhop, &c., his execu-
" tors, adminiſtrators, or ſucceſſors, in ſuch and the ſame
" manner, as fully and effectually, to all intents and pur-
" poſes as any landlord or leſſor, or other perſon or per-
" ſons, could or might do for recovering of arrears of rent
" due on any leaſe or leaſes, for life or lives, or years,
" by the laws now in being." *ſ.* 3.

" And this act ſhall be deemed and taken to be a public
" act; and ſhall be judicially taken notice of as ſuch
" in all courts of law and equity, without ſpecially plead-
" ing the ſame." *ſ.* 4.

CHAP. VII.

What Leaſes, Parſons, Vicars, and other Eccleſiaſtical Perſons may make of their Glebe, Tythes, Farms, &c.

AT *common law*, no *biſhop*, *abbot*, *prior*, *dean*, *prebend*, or other *ſingle corporation*, could make any *alienation* or *leaſe* to bind his ſucceſſors, without the confirmation of their *chapter*, *covent*, &c. 1 Inſt. 45. a.

The

Stat. 32 Hen. 8. The firſt ſtatute that made any alteration was the ſtatute of 32 *H.* 8. commonly called the *Enabling Statute*; whereby it is enacted,

"That all leaſes then after to be made of a manor, "lands, tenements, or hereditaments, by writing under "hand and ſeal, for term of years, or for term of life, by "any parſon or parſons of the full age of *twenty-one years*, "having any eſtate of inheritance either in *fee-ſimple* or "*fee-tail*, in their *own rights*, or in the *right* of their "*churches*, &c. ſhall be good and effectual in the laws "againſt the leſſors, their wives, heirs, and ſucceſſors."

"PROVIDED, That ſame ſhall not extend to any leaſe "of any manors, &c. where any old leaſe ſhould be in "being, unleſs the ſame expire, be ſurrendered or ended "within *one year* after the making of ſuch new leaſe, nor "ſhall extend to any grant to be made of any reverſion "of any manors, &c. nor to any leaſe of any ma-"nors, &c. which have not moſt commonly been "letten to farm, or occupied by the farmers thereof, "by the ſpace of *twenty years* next before ſuch leaſe "thereof made, nor to any leaſe to be made without im-"peachment of waſte, or to any leaſe to be made above "the number of *three lives*, or *twenty-one years* at the "moſt, from the day of the making thereof; and that "upon the making of every ſuch leaſe there be reſerved "yearly, during the ſaid leaſe, due and payable to the "ſaid leſſors, their heirs and ſucceſſors, to whom the "reverſion ſhall appertain, &c. ſo much yearly farm or "rent, or more, as hath moſt accuſtomably been yielded "and paid for the ſaid manors, &c. ſo to be letten with-"in *twenty years* next before the leaſe thereof made, &c."

"This ſtatute not to extend to give any liberty or "power to any parſon, vicar, &c. to make any leaſe or "grant of any of their meſſuages, lands, tythes, &c. or "in any other manner than they ſhould or might have "had before the making ſame."*

The requiſites to conſtitute an eccleſiaſtical leaſe under the ſtatutes.

1ſt. "Such leaſe muſt be made by *writing indented*, "and not by parol or deed poll."

2d "It muſt be made *to begin from the making*, or day "of the making of ſuch leaſe."

* Before this ſtatute no archbiſhop, biſhop, archdeacon, dean, or prebend, could have made any leaſe to have bound his ſucceſſors without the confirmation and conſent of their chapters, &c. as aforeſaid; but now they are enabled to make leaſes for their lives, or one-and-twenty years, without any confirmation at all with the above qualifications.

3d. "If

3d. "If there be *any old leaſe* in being at the time of "the making of ſuch leaſe, *it muſt expire, be ſurrendered* "*or ended within a year* after the making of ſuch new "leaſe, and ſuch ſurrender muſt be abſolute, and not "upon condition."

4th. "There *muſt not be a double leaſe* in being at one "and the ſame time; the one for years, and the other for "lives."

5th. "Such leaſe muſt be *of lands manurable or corpo-* "*real*, which is neceſſary to be letten, and out of which "a rent may be reſerved, and not of things *that lie merely* "*in grant*, as fairs, markets, tythes, tolls, franchiſes, "advowſons, &c."

6th "Such leaſe muſt be of lands, &c. which have "*moſt commonly been letten to farm*, or occupied by the "farmers thereof for the moſt part of twenty years be- "fore the making of ſuch leaſe: ſo if they have been to "let for *eleven years* within twenty years next before the "making of the new leaſe, it ſuffices: and a letting to "farm by copy of court-roll, is a ſufficient letting to farm "within this ſtatute, to enable the making of ſuch new "leaſe."

7th. "*There muſt be reſerved* upon every ſuch leaſe, "and payable during the continuance thereof to the leſſor, "his ſucceſſors, &c. *ſo much farm or rent as hath moſt* "*accuſtomably been yielded* and paid for the land ſo de- "miſed within twenty years next before ſuch leaſe made: "ſo that it ſufficeth, if the yearly rent or farm be re- "ſerved, though heriots and other caſual ſervices be "omitted; ſo if a greater rent than formerly be reſerved, "it ſufficeth: but if the leſſor reſerve a leſs rent than "the ancient during his life, and after the full rent, yet "it is naught, becauſe it muſt be reſerved *during the* "*whole term*: ſo if lands uſually letten be demiſed with "any other lands, &c. though a rent be reſerved that "exceeds the value of thoſe lands and the old rent; yet "ſuch leaſe is not good againſt the ſucceſſor within this "law. But if the rent were formerly reſerved to be paid "at four ſeveral days, and by the new leaſe be reſerved "to be paid all at once, ſo the whole rent be reſerved "yearly, it is well enough."

If a biſhop, &c. have two diſtinct manors, that have anciently been demiſed together, and one entire rent re- Keb. 192—374. 1 Mod. 208. 2 Mod. 87.

ſerved for both manors; and theſe being out of leaſe, the biſhop, &c. may demiſe them ſeverally, reſerving ſeveral rents amounting to the whole ratably. Theſe have been *adjudged* in the *Common Pleas* to be good, and *affirmed* in *error* in the *King's Bench*; on this principle, that if a termor for life ſhould leaſe part for years, and then ſurrender and accept a new leaſe, rendering the *ancient* rent, it would be a good leaſe, *tamen quære:* for of that part leaſed by the termor, there would be two leaſes on foot together; but if the new leaſe were only of the lands not demiſed by the termor, then it ſeems good.

8th. "Laſtly; Such leaſe *muſt not be without impeachment of waſte*; and therefore a leaſe to one for life, remainder to another for life, remainder to a third for life, is not good againſt the ſucceſſor, though but for three lives, becauſe the remainders make the preſent tenants diſpuniſhable for waſte for the time."

Co. 8. 70b. A leaſe for *ninety-nine years*, if three lives live ſo long, is not good within this ſtatute.

By 1. *Elizabeth*, "All gifts, grants, feoffments, fines, and other conveyances and eſtates, from the *firſt* day of that preſent parliament, to be had, made, done, or ſuffered, by any archbiſhop or biſhop of any honours, caſtles, manors, lands, tenements, or other hereditaments, being part of the poſſeſſions of his archbiſhoprick or biſhoprick, or united, appertaining or belonging to any the ſame archbiſhopricks or biſhopricks, to any perſon or perſons, bodies politick or corporate (other than the Queen's Majeſty, her heirs and ſucceſſors*), whereby any eſtate or eſtates ſhould or might paſs from the ſaid archbiſhops or biſhops, or any of them, other than for the term of *twenty-one years*, or *three lives*, from any ſuch time as any leaſe, grant, or aſſurance ſhall begin, and whereupon the old accuſtomed yearly rent or more ſhall be reſerved and payable yearly during the ſaid term of *twenty-one years*, or *three lives*, ſhall be utterly void and of none effect, to all intents, conſtructions, and purpoſes."†

Though this ſtatute enacts, *That all leaſes made in any other form ſhall be void and of none effect, to all intents and*

* This exception or reſervation to the Queen is made void by 1 *Jac. c.* 3.——*E.*

† This being a *private act*, muſt in all caſes be pleaded, and cannot be given in evidence.——*E.*

pur-

purposes, yet it hath been adjudged, that it is only to be intended as against the successors, and that leases made in other forms shall be good, notwithstanding against the party himself that makes them, and may be affirmed by the successor, by the receipt of the rent reserved thereupon.

Though this statute do not restrain demising of any lands not formerly demised, yet it does it by implication: for the accustomable rent must be reserved, and unless accustomably let, there cannot be an accustomable rent; and leases within this statute must have all the restrictions in statute 32 *H.* 8.

It must be of things manurable. *Vide Co.* 5. 3. *a.* out of which a rent may be reserved. Of what things such leases may be made.

On stat. 32 *Hen.* 8. & 1 *Eliz.* it has been held, that archbishops and bishops may, with confirmation of the dean and chapter, make concurrent leases, that is, notwithstanding there be a lease in being for *twenty-one years*, they may make a new lease of the same lands to another for *twenty-one years* from the making thereof; and this being confirmed as aforesaid, shall bind the successor, the other things being observed in it. Concurrent leases. 1 Inst. 45. 3. More 66. 1 Inst. 45. a.

Sir *Edward Coke* is of opinion, that like *concurrent leases* may be made by *deans*, *prebends*, &c. with confirmation: though some learned men are not satisfied concerning *concurrent leases*, because by these *concurrent leases* the successor loses his remedy for his rent by distress during the former term, and the tenant may be insolvent as to an action of debt. A *concurrent lease* for *lives* is not good, because upon such lease, the lessor would have no remedy for his rent 1 Inst. 45. a. More 253. Cro. Eliz. 141.

The next restrictive statute is 13 *Elizabeth*, whereby it is enacted, "That from thenceforth all *leases*, *gifts*, "*grants*, *feoffments*, *conveyances* or *estates*, to be made, "had, done, or suffered by the *masters* and *fellows* of any "*college*, *dean and chapter* of any cathedral or collegiate "church, *master* or *guardian* of any *hospital*, *parson*, *vicar*, "or any other having a *spiritual* or *ecclesiastical* living, "or any houses, lands, tythes, tenements, or other here-"ditaments, being any part of the possessions of any such "college, &c. or anywise appertaining or belonging to "the same, or any of them, to any person or persons, "bodies, &c. (other than for the term of *twenty-one years*, "or *three lives*, from the time as any such lease or grant The restrictive statute against leases of deans, prebends, &c.

" ſhall be made or granted, whereupon the accuſtomed " yearly rent or more ſhall be reſerved and payable during " the ſaid term) ſhall be utterly void, &c."

Co. 5. 146. The penning of this ſtatute, and 1 *Eliz.* being in effect the ſame in ſubſtance, the conſtruction is the ſame; though in this there was no ſaving of grants to the King, and therefore being for the public good, had reſtrained other grants to him not warranted by this, though ſtat 1 *Jac. cap.* 3. had never been made.

Parſons and vicars reſtrained by this ſtatute. " *Parſons and vicars had not their power anywiſe enlarged by ſtatute* 32 *H.* 8. they had no reſtriction on " them till this ſtatute; but from henceforth they are re- " ſtrained from making any leaſe or grants, other than for " *twenty-one years*, or *three lives*, with the qualifications " in the above ſtatutes, and ſuch leaſes muſt be confirmed " by the *patron* and *ordinary*, becauſe *excepted* in the " Enabling Statute of 32 *Hen.* 8."

After making of this ſtatute, heads of colleges, deans, prebends, &c. might have made concurrent leaſes, as well as biſhops.

No concurrent leaſe but within three years before the former ends. The 18 *Eliz.* contains the following proviſo, viz. That all leaſes then after to be made by any of the aforeſaid eccleſiaſtical, ſpiritual or collegiate perſons, or others, of any of their eccleſiaſtical, &c. lands, &c. whereof any former leaſe for years is in being and not expired, ſurrendered or ended within *three years* next after the making of any ſuch new leaſe, ſhould be utterly void, fruſtrate, and of none effect, any law, &c.*

Bonds and covenants contrary to theſe ſtatutes are void. By proviſion in ſtatute of 18 *Eliz.* all bonds and covenants then after made for the making or renewing any leaſe contrary to the intent of that ſtatute, or ſtatute of 13 *Eliz. c.* 10. ſhould be utterly void.

Leaſes of parſons to be void by non-reſidence. By ſtat. 13 *Eliz.* it is enacted, " That no leaſe of any " *benefice* or *eccleſiaſtical promotion*, with cure of any part " thereof, and not being impropriated, ſhould endure any " longer than while the leſſor ſhould be ordinarily reſident " and ſerving the cure of ſuch benefice, without abſence " above *fourſcore days* in any *one year*; but that every " ſuch leaſe *(ſo ſoon as it, or any part thereof, ſhould come*

* Biſhops are conceived not to be comprehended within this proviſo; for though the words are general enough, yet the particulars mentioned before the general words being of an inferior rank, the general words cannot draw in the more worthy.

" *it*

" *to any poſſeſſion above forbidden, or)* immediately upon " ſuch abſence, ſhall ceaſe and be void, and the incumbent " ſo offending ſhall, &c. loſe *one year's* profit of his ſaid " benefice, to be diſtributed by the ordinary to the poor " of the pariſh."

Note. The words in *italics* are repealed by ſtat. 14 Eliz. cap. 11.

By ſame ſtatute, " All charging of ſuch benefices, with " cure then after, with any penſion, or with any profit " out of the ſame, to be yielded or taken, other than rents " reſerved upon leaſes, ſhall be void."

Charges on parſonages make the grant of ſame void.

Where any parſon ſhould be qualified to have *two livings*, he may demiſe the one of them, where he is not ordinarily reſident, to his curate only, that ſhall there ſerve the cure. But ſuch leaſe ſhall endure no longer than during ſuch curate's reſidence without abſence above *forty days* in any *one year*.

In what caſe a parſon may demiſe, notwithſtanding his non-reſidence.

By ſtat. 4 *Elizabeth*, All leaſes, bonds, promiſes, and covenants, of and concerning benefices and eccleſiaſtical livings, with cure to be made by any curate, ſhall be of no other, or better force, validity, or continuance, than if the ſame had been made by the beneficed perſon himſelf, that ſhall demiſe the ſame to ſuch curate.

Leaſes, bonds, and covenants, to be void.

By ſame ſtatute it is enacted, That the *reſtrictive ſtatute* 13 *Eliz. c.* 10. ſhall not extend to any *grant*, *aſſurance*, or *leaſe of any houſes* belonging to any the perſons, &c. in *ſtat.* 13 *Eliz.* nor to any *grounds* to any ſuch *houſes* appertaining, &c. in any *city*, *borough*, *town-corporate*, or *market-town*, or the *ſuburbs* of any of them; but that all ſuch houſes and grounds may be granted, demiſed, and aſſured, as they might have been before the making of the ſame, ſo always as ſuch houſe be not the *capital*, or *dwelling-houſe* uſed for the habitation of the parſons, &c. nor have above *ten acres* of the ſame.

Houſes in corporations, &c. how to be leaſed.

That no leaſe be made by virtue of this act in reverſion, nor without reſerving the accuſtomed yearly rent at leaſt; nor for a longer term than forty years at moſt, charging the leſſee with repairs, and no alienation in fee, unleſs lands of as good yearly value be ſettled, &c. in lieu thereof.

Not to leaſes in reverſion.

By a proviſo in this ſtatute, all *bonds*, *contracts*, *promiſes*, and *covenants*, to be made for the ſuffering or permitting any perſon to enjoy any *benefice* or *eccleſiaſtical* promotion with cure, or to take the profits or fruits thereof, other than ſuch *bonds* or *covenants* as ſhall be made for

Bonds, contracts, covenants, promiſes, in what caſe void.

assurance of any leaſe heretofore made, ſhall be of no other force than leaſes made by the ſame perſon.

Offences againſt this ſtatute to be made to the ordinary.

By ſtat. 18 *Eliz. c.* 11. it is enacted, That after complaint made to the ordinary, and ſentence given upon any offence committed by the incumbent againſt ſtatute of 13 *Eliz. c.* 20. whereby he ſhall or ought to loſe a year's profit of his benefice, &c. then the ordinary within *two months* after ſuch ſentence and requeſt made by the church-wardens of the pariſh, where, &c. or one of them, ſhall grant the ſequeſtration of ſuch profits to ſuch inhabitant or inhabitants within the ſame pariſh, &c. as to him ſhall ſeem meet, &c.

Any pariſhioner may avail himſelf of a breach of this ſtatute.

On default of the ordinary, it ſhall be lawful for every pariſhioner, &c. to retain, &c. his tythes, and for the church-wardens to enter upon the glebe-land, rents, and duties of every ſuch benefice to be employed to the uſe of the poor, &c. until ſuch time as ſequeſtration ſhall be committed by the ordinary; and then the church-wardens and pariſhioners to account to ſuch to whom the ſequeſtration ſhall be committed, who is to employ the whole profits according to the act, upon pain to forfeit the double value of the profits withholden, to be recovered in the eccleſiaſtical court by the poor of the pariſh.

Co. Litt. 44. 45.

On theſe reſtrictive ſtatutes, two obſervations ariſe, viz. Firſt; That they do not by any conſtruction enable any perſons to make ſuch leaſes as they were by *common law* diſabled to make. A parſon or vicar, though he is reſtrained from making longer leaſes than for *twenty-one years*, or *three lives*, even with the conſent of patron and ordinary; yet is not enabled to make any leaſe at all, ſo as to bind his ſucceſſors, without obtaining ſuch conſent: Secondly; That though leaſes contrary to theſe acts are declared void, yet they are good againſt the leſſor during his life, if he be a ſole corporation, and are alſo good againſt an *aggregate* corporation, ſo long as the head of it lives, who is preſumed to be the moſt concerned in intereſt. For theſe ſtatutes were intended for the benefit of the ſucceſſor *only*, and no man ſhall make an advantage of his own wrong.*

If

* By the foregoing ſtatutes it appears, that *archbiſhops* and *biſhops* may make leaſes for *twenty one years*, or for *one*, *two*, or *three lives*, with the qualifications

If a biſhop had two chapters, and one of them ſurrenders, is ſuſpended or diſſolved, the confirmation of the other ſuffices.

There is a caſe in Mr. Juſtice Harpur's Reports, where the caſe is put, that a biſhop made a leaſe, dated 2 *die Maii*, confirmed the third day, and ſealed the fourth day of May, and held a good leaſe, and well confirmed.

A confirmation by the dean and chapter after the death of the biſhop, comes too late; ſo held by *Catlyne*, *Suthcoate*, and *Windham*, againſt *Wray*.

If a biſhop make ſeveral concurrent leaſes, and the latter is firſt confirmed, and after the firſt is confirmed; in this caſe, the firſt leaſe ſhall be preferred, becauſe nothing paſſes by the confirmation in point of intereſt but a mere conſent.

If a biſhop make a grant to the King, which is confirmed by the dean and chapter before the grant is inrolled, this is well enough.†

Deans, prebendaries, heads of colleges, maſters of hoſpitals, and other eccleſiaſtical perſons mentioned in ſtatute 13 *Eliz. c.* 10, may make leaſes for *twenty-one years*, or any leſſer number of years, for one, two, or three lives in poſſeſſion, according to the qualifications above-mentioned; and they may make concurrent leaſes as biſhops may with confirmation; but they muſt be within three years of the determination of the former term by expiration, ſurrender, or otherwiſe: ſo that in this point the biſhop has the advantage.

The enabling ſtatute of 32 *H.* 8. gives power to make leaſes, to hold from the making, or day of the making; yet the reſtrictive ſtatute of 13 *Eliz.* makes them void, if they be not made to hold from the making, and not from the day of the making; but the leaſes of biſhops and archbiſhops are not within that act.

qualifications before-mentioned, without any confirmations at all: and they may make concurrent leaſes for *twenty-one years*, upon leaſes for *twenty-one years* from the making, with confirmation of the dean and chapter, with ſuch qualifications as is aforeſaid, though there be above three years in being of the old leaſe at the time of the making the new; and where the biſhop has two chapters, there the concurrent leaſe muſt be confirmed by both chapters.

† A biſhop cannot make a concurrent leaſe for life, though upon a precedent leaſe for years, nor a concurrent leaſe for years, where there is a leaſe for life in being.

All concurrent leaſes of any biſhop, dean, prebend, and archdeacon, are to be confirmed; the leaſes of biſhops and archbiſhops are to be confirmed by the dean and chapter, or deans and chapters, if there be ſeveral chapters.

Grants made by a prebend are to be confirmed by the biſhop, dean and chapter.

Grants made by deans are to be confirmed by the biſhop and chapter.

Grants made by the archdeacon, by the biſhop, dean, and chapter.

Grants of parſons and vicars, by their patrons and ordinaries.

Grants by the incumbent of a donative, by the patron alone.

If a parſon makes a leaſe, which is confirmed by the biſhop *only*, who is patron, without the dean and chapter, which ought to have joined, it ſhall bind the ſucceſſor during the lives of the biſhop and incumbent, although the biſhop be tranſlated.

Grants by parſons, vicars, prebends, &c. before induction or inſtallation, &c. although confirmed, are not binding to the ſucceſſor.

If the King be patron of a prebendary, then the King and dean and chapter, and not the biſhop, ought to confirm the grant.

A leaſe made by a prebend, parſon, vicar, &c. may be confirmed for part of the term, if it be for years, that is, confirm the land to the leſſee for ſo many years of the term; but if the term be confirmed for part of the term, it were abſurd and repugnant, and ſhould be good for the whole term: and as ſuch leaſe may be confirmed for part of the term, ſo it may be for part of the land.

If a parſon, &c. make a grant, which is confirmed by the patron and ordinary, and after be deprived, yet the grant is good.

A huſband ſeiſed in the right of his wife of an advowſon, the parſon makes a leaſe warranted by the ſtatutes before-mentioned, and the biſhop and huſband confirm it; this ſhall not bind the right of the wife but during the huſband's life, but that the ſucceſſor after his death will

will avoid it, that comes in by the presentation of th wife.

If a tenant *in tail*, being patron, confirm the grant of the parson with the bishop, this shall not bind the incumbent of the issue in tail.

If an usurper present, and confirm the lease of his incumbent with the bishop, and after is removed by writ of *quare impedit*, &c. this shall not bind the clerk of the true patron.

If the true patron grant the next avoidance, and then confirm the grant of the parson, who after dies, the incumbent presented by him that had the next avoidance shall avoid the lease, and his very entry upon the lessee avoids the lease for ever.

If the parson makes a lease to the patron, which is confirmed by the bishop, this is not good; but if the patron grants it over, it amounts to a confirmation.

If a prebend, parson or vicar, make a lease, and the bishop, being patron, confirms it without the dean and chapter, yet this shall bind the bishop and all the prebends, parsons, &c. which he shall collate.

If a parson had made a lease for above *twenty-one years* before statutes 13 & 14 *Eliz.* which had been confirmed after; this had been good, and not within the restriction of those laws.

If a parson leases where there are two patrons, both ought to confirm.

If the patron and a succeeding bishop confirm the lease of the parson, it is good enough.

A prebend made a lease, reciting that it was with the consent of the bishop, who signed and sealed the lease to the lessee, but was no party to the deed.*

By the *common law*, a parson or vicar might have granted or charged his glebe in fee-simple, with the confirmation of the patron and bishop; but being excepted out of the enabling statute 32 *H.* 8. he could never make any lease or grant to bind their successors without such confirmation; then by statute 13 *Elizabeth*, parsons and vicars are restrained: so that they cannot grant but for *eleven years*, or *three lives* from the making of such lease, and not from the day of the making as is before observed;

* This grant has been questioned.——E.

and

and theſe leaſes and grants muſt be with the confirmation of the patron and ordinary, with all the qualifications expreſſed in the beginning of this chapter.

They may make concurrent leaſes, as deans, prebends, &c. may do within *three years* of the end of the former leaſes.

It has been a queſtion, Whether a parſon or vicar at this day can make any leaſe at all to bind his ſucceſſor?

For by ſtatute 13 *Eliz. cap.* 20. it is enacted, That leaſes of parſons, vicars, &c. that have cure of ſouls, ſhall endure no longer than they ſhall be ordinarily reſident, and ſerve the cure; and that if ſuch parſon, &c. ſhall be abſent from their cure above *eighty days* in *one year*, that then ſuch leaſe ſhall ceaſe, and be void.

When a parſon dies, and *eighty days* incur, and this being a law for the advancement of religion and hoſpitality, to avoid dilapidations, it ſhall have an equitable conſtruction for the preferring theſe ends: therefore ſome have held, that the death of the parſon, vicar, &c. after *eighty days* have incurred from their deaths, ſhall make all their leaſes and grants void, though never ſo ſufficiently confirmed; and rely very much upon the preamble of the ſtatute, which begins, "That the livings appointed for "*eccleſiaſtical* miniſters may not by corrupt and indirect "dealings be transferred to other uſes: be it enacted, &c. "but by theſe leaſes it is apparent the profits are con-"verted to other uſes, &c."

Others have held the contrary opinion, becauſe ſuch abſence is not voluntary, but by the act of God, and regularly theſe cannot be ſaid abſent that are not in *eſſe*.

Crook reports in Mott and Hale's caſe, adjudged in point, that their leaſes are void by death; yet *More* reporting the ſame caſe, ſays, "As to the matter in law, "the judges were divided, two againſt two, and that the "judgment was given upon a miſrecital of the ſtatute."

There is a *quære* in *Dyer*, whether ſuch leaſes ſhall be void upon *eighty days* abſence *ab initio*, or but from the time of abſence by *eighty days*; but it ſeems to me with ſome clearneſs, that it ſhall only be void from *eighty days* abſence, and not *ab initio*.

For firſt; The words of the ſtatute are, "That ſuch "leaſe ſhall indure no longer than the leſſor ſhall be "ordinarily reſident, &c." ſo that till then it is to en-

"dure;

dure; and the ſtatute cloſes, "That upon ſuch abſence "the term ſhall ceaſe," which it could not do if it had not a being before; for a thing cannot ceaſe to be that has not been.

Another *quære* may be ſtarted in this caſe upon the reaſon in the *Lincoln College caſe*, whether ſuch leaſe ſhall be void againſt the preſent incumbent that made it, or only againſt his ſucceſſors.

It ſeems that the intent of the makers of this act was, to make ſuch leaſe void againſt the leſſor himſelf upon ſuch abſence: for, as before is ſaid, the ſtatute ſays. "it ſhall "indure no longer," which is a term of limitation, and that immediately upon ſuch abſence, the leaſe ſhall ceaſe, and be void; and it cannot ceaſe immediately upon the abſence, and yet be good during the life of the incumbent.

In the caſe of *Ruel verſus Hart*, ſtat. 43 *Eliz. B. R.* the court held the contrary.

If any parſon, vicar, &c. be ſuſpended, inhibited, or diſabled to ſerve the cure by the ſpace of *eighty days* in a year, this ſhall not make ſuch leaſe void, for the not ſerving the cure muſt be voluntary.

It hath been held, that if a parſon be reſident, and do not ſerve the cure, or ſerve the cure and be abſent by *eighty days*, that in both theſe caſes it will make ſuch leaſe void.

Though this ſtatute on *eighty days* abſence makes ſuch leaſe void made by parſons and vicars, and ſays nothing of confirmation; yet a confirmation of the patron and ordinary in this caſe ſeem not to amend the matter; for if the leaſe be void, the confirmation is of no avail.

At the *common law*, if a parſon, vicar, &c. had made a leaſe and reſigned, the next incumbent might have entered immediately upon the leſſee.

Bonds, Covenants, &c. void within 18 *Eliz.*

Covenants, bonds, &c. made for the enjoying houſes within cities, corporations, &c are not void, within this law; for this law makes no bonds, covenants, &c void, which are not againſt the intent of this ſtatute, and the ſtatute 13 *Eliz. cap.* 10. but leaſes of houſes and lands in cities, &c. by ſtatute 14 *Eliz. cap.* 11. are exempted out of 13 *Eliz. cap.* 10. and are not within ſtatute 18 *Eliz.*

A par-

A parſon made a bond to reſign upon requeſt, and afterwards a leaſe to his patron of part of the glebe for *twenty-one years*. In an action brought upon this bond, the incumbent pleaded the ſtatute 18 *Eliz.* and averred, that this bond was made to ſecure this leaſe, and to compel the incumbent to reſide, and adjudged a good plea, and an apt averment.

A parſon made a leaſe, and in the leaſe covenanted not to be abſent by the ſpace of *eighty days* in any one year, and gave bond for the performance, and after became non-reſident for *eighty days*; and reſolved, that the bonds and covenants were both void.

A parſon made a leaſe, and covenanted neither to do or ſuffer to be done, any matter, whereby the leaſe ſhould become void, and after became non-reſident by the ſpace of *eighty-days* in a year, and this was held a good covenant; and a covenant, that the parſon ſhould be reſident, was held not to be againſt this law, by *Popham*, *Tanfield*, and *Clench*, againſt *Williams*.

Leaſes of Colleges and Hoſpitals.

It is to be obſerved, that they are not comprehended in the enabling ſtat. 32 *H.* 8. nor in any other ſtatute, till the reſtrictive ſtat. 13 *Eliz.* whereby (amongſt the reſt) the maſters and fellows of colleges, and the maſters and guardians of hoſpitals, are diſabled to make any grants or conveyances of any of their poſſeſſions, other than for *twenty-one years*, or *three lives*, from the making of ſuch leaſe, and not from the day of the date, or from the date, as has been ſaid: and this muſt be of lands uſually demiſed, and the accuſtomed rent, or more, muſt be reſerved, with all the other qualifications mentioned before.

There is a reſtriction upon colleges by the ſtatute 18 *Eliz.* that upon all college leaſes, a *third part* of the ancient rent ſhall be reſerved in *wheat and malt*, after the rate of *ſix-ſhillings and eight-pence* a quarter wheat, and *five-ſhillings* a quarter malt, to be delivered at the colleges; and in default of the delivery, to pay for the wheat and barley, after the rate the beſt wheat and malt ſhall be ſold the next market-day, before the rent ſhould have been paid; and for default of ſuch reſervation, the leaſe to be void; and the markets that are to ſet the prices

are,

ate, *Oxford* for *Oxford*. *Cambridge* for *Cambridge*, *Windsor* for *Eaton*, *Winchester* for *Winchester*.

By statute 18 *Eliz.* they are restrained to make any concurrent leases till within *three years* of the end of the former terms that are in being.

As to what things are demisable within these several statutes, and what reservations are good, and in what cases the acceptance of rent by the successor will make a lease good, that was voidable within these laws, and the several qualifications mentioned before.

One *Small* being possessed of the *manor of Padington*, by a lease from a bishop of a term of years; the bishop made a lease to another for three lives, and before livery the tenant surrendered his former term; and it was held, that the surrender was made in due time, and the second lease good.

A prebend made a new lease without excepting the crab-trees, as was done in the former lease, reserving the ancient rent, with other due circumstances; and this lease was held void against the successor, by reason of the adding of the crab-trees.

It hath been adjudged, that a bishop, dean, &c. cannot grant the next avoidance of an advowson, nor any rent-charge out of the possessions of the church; but the same is void within the restrictive acts before mentioned, though these cannot be said to be any of the possessions of their churches.

It hath been held, that where a bishop demised a rectory for lives, and covenanted to discharge, save harmless, and indemnify, the lessee, &c. from all pensions, procurations, subsidies, and from all other payments of any sum of money, demands and duties whatsoever, ordinary or extraordinary, which shall be due and issuing out of the premises; that this covenant would not bind the successor, unless it had been in the ancient leases

Hale, Chief Justice, was of opinion, that such covenant, though it had been in former leases, should not bind the successor for the royal aid, or any new charge by act of parliament.

A bishop may grant an ancient office, with the ancient fee (if it be a necessary office, for the life of the officer); but the bishops cannot grant such office to two, or in reversion.

A bishop cannot grant an annuity *pro consilio impenso* et

et impendendo, to bind his ſucceſſor, though it be confirmed by the dean and chapter.

It hath been reſolved, that a biſhop of late erection may grant an office of neceſſity to one in poſſeſſion for life, with a reaſonable fee.*

Where offices have anciently been granted in reverſion, they may ſtill be granted in reverſion, with confirmation.

If a biſhop grant an ancient office with the ancient fee and more, and the grant be entire (as where the ancient fee was *five marks*, and the new, *five pounds*), it is void for all. But if it be ſeveral (as *five marks*, and paſturage for *two horſes*), it is good for the ancient fee, and void for the other, *per Hutton and Yelverton, verſus Crook and Harvey.*

If a copyhold eſcheator be forfeited, the biſhop may grant it in fee by copy of court-roll, notwithſtanding ſtat. 1 *Eliz.*

It was alſo reſolved, that where an archdeacon made a leaſe for three lives, warranted by the ſtatutes before-mentioned, and the leſſee granted a rent-charge for an *hundred years*, which was confirmed by the biſhop, dean and chapter; that notwithſtanding the ſame was void againſt the ſucceſſor within ſtatute 13 *Eliz. cap.* 10.

If a *writ of annuity* ſhould be brought againſt a parſon, &c. pretending the ſame due by preſcription; and although the parſon pray in aid of the patron and ordinary, and upon a plea pleaded by them, the plaintiff obtains a verdict and judgment, and all this by practice and fraud to charge the glebe, it is void againſt the ſucceſſor: for theſe ſtatutes being made for the benefit of the church, the advancement of religion and hoſpitality, and to avoid dilapidations, ſhall always have a favourable conſtruction.

It is regularly true, that where the wife, iſſue in tail, or ſucceſſor, accepts the rent after the death of the huſband, tenant in tail, or predeceſſor, upon a void leaſe made by the huſband, tenant in tail, or predeceſſor, that ſuch acceptance will not affirm the leaſe.

This rule muſt be underſtood of ſuch a leaſe as is void *ipſo facto*, without entry, or any other ceremony; and

* Theſe grants muſt be all confirmed by the dean and chapter, becauſe they are not good within the ſtatute 32 Hen. 8.

therefore

therefore if a parſon, vicar, or prebend, &c. make a leaſe not warrantable by the ſtatutes for *twenty-one years*, rendering rent, and dies, here no acceptance of rent by the ſucceſſor, &c. will affirm this leaſe, becauſe the ſame was void without entry, or other ceremony.

If a parſon, vicar, or prebend, make a leaſe not warrantable within the before-mentioned ſtatutes, for life or lives, reſerving rent, and die, and the ſucceſſor before entry, accept the rent, this leaſe ſhall bind him for the time. For this being an eſtate of freehold, could not be a void entry.

If a biſhop, abbot, or prior, which have the inheritance in fee-ſimple in them, make a leaſe for lives, or years, not warranted by the ſtatutes before-mentioned, not being abſolutely void by their deaths, but only voidable by the entry of the ſucceſſor, if the ſucceſſor accept the rent before entry, be it for lives or years, he affirms the leaſe for his life.

If a biſhop make a leaſe not warranted by the ſtatutes, rendering rent, and die, and his ſucceſſor appoints his bailiff to collect his rents of that manor, who, amongſt the reſt, receives the rent reſerved upon this demiſe, and accounts to the biſhop's ſucceſſor for it, this is a good acceptance, and ſhall bind the biſhop for his time.

If a parſon leaſe for life, not warranted nor confirmed, reſerving rent, if his ſucceſſor receive fealty of his tenant upon this leaſe, he has thereby affirmed the leaſe for his time: the like it will be if the ſucceſſor bring an action of waſte.

If a biſhop make a leaſe of tythes, or other things not manurable for life or lives, rendering rent, and dies, and his ſucceſſor accepts this rent, it will not affirm the leaſe.

Whether ſuch acceptance upon a leaſe for years of tythes, &c. will bind the ſucceſſor, ſeems yet a quære.

As to what Leaſes or Farms may or may not be taken.

By ſtatute 21 *Hen.* 8. it is, amongſt other things, enacted, "That no ſpiritual perſon ſhall in his own name, "or in the name of any other, take to farm any manors, "lands, tenements, or hereditaments, upon the penalty "of ten pounds for every month that he holds the ſame; "nor Stat. 21 Hen. 8.

"nor by himſelf, nor any other, ſhall buy cattle, corn, "lead, tin, hides, leather, tallow, fiſh, wool, wood, or "any manner of victuals or merchandizes, to ſell again "for gain, upon pain to forfeit the treble value of things "ſo bought."

It is further enacted by the ſame ſtatute, "That no *ſpi-* "*ritual* perſon beneficed with cure of ſouls, ſhall farm "the parſonage or vicarage of another to take any rent or "profit out of ſuch farm, upon the penalty of *forty ſhillings* "a week, and *ten times* the value of the rent, or profit he "ſhall take out of his farm."

It is further enacted by the ſame ſtatute, "That no *ſpi-* "*ritual* perſon ſhall have or keep by himſelf, or any other, "any tan-houſe or brew-houſe, other than for his own fa- "mily, upon pain to forfeit *ten pounds per menſem.*"

All which penalties are given to the king and informer, to be recovered in any of his majeſty's courts of record at *Weſtminſter*, by action of debt, bill, plaint, or information, wherein no eſſoin, protection, or wager of law is to be admitted, &c.*

Stat. 5 Geo. 3. cap. 17. By ſtatute 5 *Geo.* 3. *cap.* 17. a leaſe of tythes or other incorporeal hereditaments alone may be granted by any biſhop, or any ſuch *eccleſiaſtical* or *eleemoſynary* corporation, and the ſucceſſor ſhall be entitled to recover the rent by an action of *debt*, which (in caſe of a freehold leaſe) he would not have brought at the *common law*.

CHAP. VIII.

The Manner of paying Tythes, together with the Sums payable by the reſpective Pariſhes in London.

BY the ſeveral acts of the 27 *H.* 8. *c* 20. 32 *H.* 8. *c.* 7. 2 & 3 *Edw.* 6. *c.* 13. and 7 & 8 *W.* *c.* 6. it is provided, that nothing therein ſhall extend to the city of *London* concerning any tythe, offering, or other eccleſiaſtical duty grown and due to be paid within the ſaid city; becauſe there is another order made for the payment of tythes and other duties there; which order is thus

* But ſee 43 *Geo.* 3. *c.* 84. which repeals the penalties for non-reſidence, &c. a copious abſtract of which will be found in the Appendix.——*E.*

for

ſet forth: It appears by the records of the city of *London*, that *Niger* Biſhop of London, in 13 *Hen.* 3. made a conſtitution in confirmation of an ancient cuſtom formerly uſed time out of mind, that proviſions ſhould be made for the miniſters of *London* in this manner, that is to ſay, that he who paid the rent of *twenty ſhillings* for his houſe wherein he dwelt, ſhould offer every *Sunday* and every *Apoſtle's day* whereof the evening was faſted, *one half-penny*, and he that paid but *ten ſhillings* rent yearly ſhould offer but *one farthing*; all which amounted to the proportion of *two ſhillings and ſix-pence in the pound*, for there were *fifty-two Sundays*, and *eight Apoſtles days*, the vigils of which were faſted. And if it chanced that one of the *Apoſtles days* fell upon a *Sunday*, then there was but *one half-penny* or *farthing paid*; ſo that ſometimes it fell out to be ſomewhat *leſs* than *two ſhillings and ſix-pence* in the pound. And it appears by the *book caſes* in the reign of *Edward the Third*, that the proviſion made for the miniſters of *London* was by offerings and obventions; albeit the particulars are not aſſigned there, but muſt be underſtood according to the former ordinance made by *Niger*: and the payment of *two ſhillings and ſix-pence in the pound*, continuing until the 13 *Rich.* 2. *Arundel*, Archbiſhop of Canterbury, made an explanation of *Niger's* conſtitution, and thruſt upon the citizens of *London two and twenty* more *Saint days* than were intended by the conſtitution made by *Niger*; whereby the offerings now amounted to the ſum of *three ſhillings and five-pence* in the pound. And there being ſome reluctation by the citizens of *London*, Pope *Innocent*, in 5 *H.* 4. granted his bull, whereby *Arundel's* explanation was confirmed; which confirmation (notwithſtanding the difference between the miniſters and citizens of *London*, about theſe *two-and-twenty Saint days* which were added to their number) Pope *Nicholas* alſo by his bull did confirm in 31 *Hen.* 6. againſt which the citizens of *London* did contend with ſo high a hand, that they cauſed a record to be made, whereby it might appear in future ages, that the order of explanation made by the Archbiſhop of Canterbury was done without calling the citizens of *London* unto it, or any conſent given by them. And it was branded by them as an order ſurreptitiouſly and abruptly obtained, and therefore more fit to have the name of a deſtructory than a declaratory order. But notwithſtanding this contention, the payment ſeems to have

been moſt uſually made according to the rate of *three ſhillings and five-pence in the pound*. For *Lynwood*, who wrote in the time of *Hen.* 6. in his *Provincial Conſtitutions*, debating the queſtion, whether the merchants and artificers of the city of *London* ought to pay any tythes, ſhews that the citizens of *London*, by an ancient ordinance obſerved in the ſaid city, are bound every Lord's day, and every principal feaſt-day, either of the Apoſtles or others, whoſe vigils are faſted, to pay *one farthing* for every *ten ſhillings* rent that they paid for their houſes wherein they dwelt.

In 36 *Hen.* 6. there was a compoſition made between the citizens of *London* and the miniſters, that a payment ſhould be made by the citizens according to the rate of *three ſhillings and five-pence in the pound*; and if any houſe were kept in the proper hand of the owner, or were demiſed without reſervation of any rent, then the churchwardens of the pariſh where the houſes were, ſhould ſet down a rate of the houſes, and according to that rate payment ſhould be made. After which compoſition ſo made, there was an act of common council made in 14 *Edw.* 4. in *London*, for the confirmation of the bull granted by Pope *Nicholas*. But the citizens of *London* finding, that by the common laws of the realm, no bull of the pope, nor arbitrary compoſition, nor act of common council, could bind them in ſuch things as concerned their inheritance; they ſtill wreſtled with the clergy, and would not condeſcend to the payment of the ſaid *elevenpence* by the year, obtruded upon them by the addition of the *two-and-twenty Saint days*; whereupon there was ſubmiſſion to the Lord Chancellor, and divers others of the Privy Council, in the time of King *Hen.* 8. and they made an order for the payment of tythes according to the rate of *two ſhillings and nine-pence in the pound*; which order was firſt promulgated by a proclamation made, and afterwards eſtabliſhed by an act of parliament made in 27 *Hen.* 8. *c.* 21 intitled, "An act for the payment of "tythes within the city and ſuburbs of *London*, until "another law and order ſhall be made and publiſhed for "the ſame."

Ten years after this, another law and order was made by the ſtatute of 37 *Hen.* 8. *c.* 12. (intitled, "An act "for tythes in *London*") as follows: "Whereas of late "time

" time contention, ſtrife, and variance, hath ariſen and
" grown, within the city of *London* and the liberties of
" the ſame, between the parſons, vicars, and curates of
" the ſaid city, and the citizens and inhabitants of the ſame,
" for and concerning the payment of tythes, oblations,
" and other duties within the ſaid city and liberties: for
" appeaſing whereof, a certain order and decree was made
" thereof by the moſt Reverend Father in God, Thomas
" Archbiſhop of Canterbury, Thomas Audley, Knight,
" Lord Audley, of Walden, and then Lord Chancellor
" of England, now deceaſed, and other of the King's
" moſt Honourable Privy Council; and alſo the King's
" letters patent, and proclamation was made thereof, and
" directed to the ſaid citizens concerning the ſame; where-
" upon it was after enacted in the parliament holden at
" *Weſtminſter* by prorogation the fourth day of *February*,
" in the twenty-ſeventh year of the King's moſt noble
" reign, that the citizens and inhabitants of the ſame city
" ſhould, at *Eaſter* then next following, pay unto the
" curates of the ſaid city and ſuburbs, all ſuch and like
" ſums of money for tythes, oblations, and other duties,
" as the ſaid citizens and inhabitants, by the order of the
" ſaid late Lord Chancellor, and other the King's moſt
" Honourable Council, and the King's ſaid proclamation,
" paid, or ought to have paid, by force and virtue
" of the ſaid order at *Eaſter* in the year 1535: and the
" ſame payments ſo to continue from time to time, un-
" til ſuch time as any other order or law ſhould be made
" by the King, and the two-and-thirty perſons by the
" King to be named, as well for the full eſtabliſhment
" concerning the payment of all tythes, oblations, and
" other duties of the inhabitants within the ſaid city,
" ſuburbs, and liberties of the ſame, as for the making of
" other eccleſiaſtical laws of this realm of *England*; and
" that every perſon denying to pay as is aforeſaid, ſhould,
" by the commandment of the Mayor of *London* for the
" time being, be committed to priſon, there to remain
" until ſuch time as he ſhould have agreed with the curate
" for his ſaid tythes, oblations, and other duties, as is
" aforeſaid, as in the ſaid act more plainly appeareth;
" ſince which act divers variances, contentions, and ſtrifes,
" are newly riſen and grown between the ſaid parſons,
" vicars, and curates, and the ſaid citizens and inhabitants,

" touching the payment of the tythes, oblations, and " other duties, by reaſon of certain words and terms " ſpecified in the ſaid order, which are not ſo plainly and " fully ſet forth as is thought convenient and meet to be; " for appeaſing whereof, as well the ſaid parſons, vicars, " and curates, as the ſaid citizens and inhabitants have " compromitted, and put themſelves to ſtand to ſuch " order and decree touching the premiſes as ſhall be made " by the ſaid Right Reverend Father in God, and the " ſeveral other perſons here under-mentioned, for a final " end and concluſion to be had and made touching the " premiſes for ever; and to the intent to have a full peace " and perfect end between the ſaid parties, his heirs and " ſucceſſors, touching the ſaid tythes, oblations, and other " duties, for ever, it is enacted, That ſuch end, order, " and direction, as ſhall be made by the fore-named " archbiſhop and the ſeveral other perſons as aforeſaid, " or any ſix of them, before the firſt day of *March* next " enſuing, concerning the payment of tythes, oblations, " and other duties within the ſaid city and liberties there- " of, and inrolled of record in the High Court of Chan- " cery, ſhall ſtand, remain, and be as an act of parlia- " ment, and ſhall bind as well all citizens and inhabitants " of the ſaid city and liberties, for the time being, as the " ſaid parſons, vicars, curates, and their ſucceſſors for ever, " according to the effect, purport and intent of the ſaid " order and decree ſo to be made and inrolled; and that " every perſon denying to pay any of his tythes, oblations, " or other duties, contrary to the ſaid decree ſo to be made, " ſhall, by the commandment of the Mayor of *London* " for the time being, and in his default or negligence, by the " Lord Chancellor of *England* for the time being, be " committed to priſon, there to remain till ſuch time as " he hath agreed with the curate for the ſame."

Which decree made in purſuance hereof, is as follows, viz. " As touching the payment of tythes in the city of " *London*, and the liberties of the ſame, it is fully ordered " and decreed by the moſt Reverend Father in God, " Thomas, Archbiſhop of Canterbury, primate and me- " tropolitan of England, Thomas Lord Wryotheſly, Lord " Chancellor of England, William Lord St. John, preſi- " dent of his Majeſty's council, and lord great maſter of " his Majeſty's houſehold, John Lord Ruſſel, lord privy

" ſeal,

" ſeal, Edward Earl of Hertford, lord great chamberlain " of England, John Viſcount Liſle, high admiral of Eng- " land, Richard Liſter, Knight, chief juſtice of England, " and Roger Cholmly, Knight, chief baron of his Ma- " jeſty's Exchequer, this twenty-fourth day of *February*, " in the year of our Lord, 1545, according to the ſtatute " in ſuch caſe lately provided, that the citizens and inha- " bitants of the ſaid city and liberties thereof for the time " being, ſhall yearly, without fraud or covin, for ever " pay their tythes to the parſons, vicars, and curates of " the ſaid city, and their ſucceſſors for the time being, " after the rate hereafter following; that is to wit, of " every *ten ſhillings* rent by the year, of all houſes, ſhops, " warehouſes, cellars, ſtables, and every of them, with- " in the ſaid city and liberty thereof, *ſixteen-pence half-* " *penny*, and of every *twenty ſhillings* rent by the year *two* " *ſhillings and nine-pence*, and ſo above the rent of *twenty* " *ſhillings* by the year, as ending from *ten ſhillings* to *ten* " *ſhillings*, according to the rate aforeſaid."

Item, " That where any leaſe is or ſhall be made of " any dwelling houſe or houſes, ſhops, warehouſes, cel- " lars, or ſtables, or any of them, by fraud or covin, " reſerving leſs rent than hath been accuſtomed, or is, or " where any ſuch leaſe ſhall be made without any rent " reſerved upon the ſame by reaſon of any fine or income " paid before hand, or by any other fraud or covin; in " every ſuch caſe the tenant or farmer ſhall pay for his " tythes of the ſame after the rate aforeſaid, according to " the quality of ſuch rents as the ſame were laſt letten for, " without fraud or covin, before the making of ſuch " leaſe."

Item, " That every owner or inheritor of any dwell- " ing-houſe or houſes, ſhops, warehouſes, cellars, or ſta- " bles, inhabiting or occupying the ſame himſelf, ſhall " pay after ſuch rate, according to the quantity of ſuch " yearly rent as the ſame was laſt letten for, without " fraud or covin."

Item, " If any perſon hath taken, or hereafter ſhall " take, any meaſe or manſion-place by leaſe, and the " taker thereof, his executor or aſſigns, doth, or ſhall " inhabit in any part thereof, and hath within eight years " laſt paſt before this order, or hereafter ſhall let out the " reſidue of the ſame; in ſuch caſe the principal farmer or

" farmers, or firſt taker or takers thereof, their executors " or aſſigns, ſhall pay their tythes after the rate aforeſaid, " according to the quantity of their rent by the year."

" And if any perſon ſhall take divers manſion-houſes, " ſhops, warehouſes, cellars, or ſtables, in one leaſe, and " ſhall let out one or more of them, and ſhall keep one " or more in his own hands, and inhabit in the ſame, " the ſaid taker and his executors or aſſigns ſhall pay " their tythes after the rate aboveſaid, according to the " quantity of the yearly rent of ſuch manſion-houſe or " houſes retained in his own hands; and his aſſignees " of the reſidue of the ſaid manſion-houſe or houſe ſhall " pay their tythes after the rate aboveſaid, according to " the quantity of their yearly rents."

Item, " If ſuch farmer or farmers, or his or their aſſigns " of any manſion-houſe or houſes, warehouſes, ſhops, " cellars, or ſtables, hath at any time within eight years " laſt paſt, or ſhall hereafter let over all the ſaid manſion- " houſe or houſes contained in his or their leaſe to one or " more perſons, the inhabitants, leſſees, or occupiers " thereof, ſhall pay their tythes after the rate of ſuch " rents as the inhabitants, leſſees, or occupiers, and their " aſſigns, have been, or ſhall be charged withal, without " fraud or covin."

Item, " If any dwelling-houſe within eight years laſt " paſt, was, or hereafter ſhall be, converted into a ware- " houſe, ſtorehouſe, or ſuch like; or if a warehouſe, " ſtorehouſe, or ſuch like, within the ſaid eight years, " was, or hereafter ſhall be, converted into a dwelling- " houſe, the occupier thereof ſhall pay tythes for the " ſame after the rate above declared of manſion-houſe " rents."

Item, " That where any perſon ſhall demiſe any dye- " houſe or brewhouſe, with implements convenient or ne- " ceſſary for dying or brewing, reſerving a rent upon the " ſame, as well in reſpect of ſuch implements as in re- " ſpect of ſuch dyehouſe or brewhouſe, the tenant ſhall " pay his tythes after ſuch rate as is aboveſaid, the third " penny abated: and every principal houſe or houſes, with " key or wharf, having any crane or gibbet belonging to " the ſame, ſhall pay after the like rate of their rents as is " aforeſaid, the third penny abated; and other wharfs

" belonging

" belonging to houſes having no crane or gibbet, ſhall " pay for tythes as ſhall be paid for manſion-houſes in form " aforeſaid."

Item, " That where any manſion-houſe, with a ſhop, " ſtable, ware-houſe, wharf with crane, timber-yard, " teinter-yard, or garden belonging to the ſame, or as a " parcel of the ſame, is or ſhall be occupied together, if " the ſame be hereafter ſevered or divided, or at any time " within eight years laſt paſt were ſevered or divided; " then the farmers or occupiers thereof ſhall pay ſuch " tythes as is aboveſaid, for ſuch ſhops, ſtables, ware- " houſes, wharf with crane, timber-yard, teinter-yard, or " garden aforeſaid, ſo ſevered or divided, after the rate of " their ſeveral rents thereupon reſerved."

Item, " That the ſaid citizens and inhabitants ſhall pay " their tythes quarterly; that is to ſay, at the Feaſt of " *Eaſter*, the Nativity of *St. John Baptiſt*, the Feaſt of " *St. Michael the Archangel*, and the Nativity of our Lord, " by even portions."

Item, " That every houſeholder paying 10*s.* rent, or " above, ſhall for him or herſelf be diſcharged of their " four offering-days; but his wife, children, ſervants, or " other of their family taking their rights of the church " at *Eaſter*, ſhall pay 2*s.* for their four offering-days " yearly.

" PROVIDED ALWAYS, and it is decreed, that if any " houſe, which hath been or hereafter ſhall be letten for " *ten ſhillings* rent by the year, or more, be or hath been at " any time within *eight years* laſt paſt, or hereafter ſhall " be divided and leaſed into ſmall parcels or members, " yielding leſs yearly rent than *ten ſhillings* by the year; " the owner, if he ſhall dwell in any part of ſuch houſe, " or elſe the principal leſſee (if the owner do not dwell " in ſome part of the ſame) ſhall pay for the tythes after " ſuch rate of rent as the ſame houſe was accuſtomed to " be letten for before ſuch diviſion or dividing into parts or " members, and the under-farmers and leſſees to be diſ- " charged of all tythes for ſuch ſmall parcels, parts, or " members, rented at leſs yearly rent than *ten ſhillings* by " the year, without fraud or covin, paying *two-pence a-* " *piece* yearly for *four offering-days*.

"PROVIDED ALWAYS, and it is decreed, That for ſuch "gardens as appertain not to any manſion-houſe, and "which any perſon holdeth in his hands for pleaſure, or "to his own uſe; the perſon holding the ſame ſhall pay "no tythes for the ſame; but if any perſon which ſhall "hold any ſuch garden, containing half an acre or more, "ſhall make any yearly profit thereof by way of ſale, he "ſhall pay tythes for the ſame after ſuch rate of his rent "as is herein firſt above ſpecified."

"PROVIDED ALSO, That if any ſuch gardens, now "being of the quantity of half an acre or more, be "hereafter by fraud or covin divided into leſs quantities, "then to pay according to the rate above-ſaid."

"PROVIDED ALWAYS, That this decree ſhall not ex-"tend to the houſes of great men or noblemen, or noble-"women, kept in their own hands, and not letten for "any rent, which in times paſt have paid no tythes, ſo "long as they ſhall ſo continue unletten; nor to any halls "of crafts or companies, ſo long as they be kept unletten, "ſo that the ſame halls in time paſt have not uſed to pay "any tythes."

"PROVIDED ALWAYS, and it is decreed, That this "preſent order and decree ſhall not in any wiſe extend "to bind or charge any ſheds, ſtables, cellars, timber-"yards, nor teinter-yards, which were never parcel of any "dwelling-houſe, nor belonging to any dwelling-houſe, "nor have been accuſtomed to pay any tythes; but that "the ſaid citizens and inhabitants ſhall thereof be quit of "payment of any tythes, as it hath been uſed and accuſ-"tomed."

"PROVIDED ALSO, and it is decreed, That where "leſs ſum than after ſixteen-pence half-penny in the *ten* "*ſhillings* rent, or leſs than *two-ſhillings and nine-pence* in "the *twenty ſhillings* rent, hath been accuſtomed to be "paid for tythes; in ſuch places the ſaid citizens and "inhabitants ſhall pay but only after ſuch rate as hath been "accuſtomed."

Item, "It is alſo decreed, That if any variance, con-"troverſy or ſtrife ſhall ariſe in the ſaid city for non-pay-"ment of any tythes; or if any variance or doubt ſhall "ariſe upon the true knowledge or diviſion of any rent or "tythes within the liberties of the ſaid city, or of any ex-"tent of aſſeſſment thereof; or if any doubt ariſe upon any

"other

" other thing contained within this decree, then upon com-
" plaint made by the party grieved to the mayor of the
" city of *London* for the time being, the ſaid mayor, by the
" advice of counſel, ſhall call the parties before him, and
" make a final end in the ſame, with coſts to be awarded
" by the diſcretion of the ſaid mayor and his aſſiſtants,
" according to the intent and purport of this preſent
" decree."

" And if the mayor ſhall not make an end thereof with-
" in *two months* after complaint to him made; or if any
" of the ſaid parties find themſelves aggrieved, the Lord
" Chancellor of *England* for the time being, upon com-
" plaint to him made, within *three months* then next fol-
" lowing, ſhall make an end in the ſame, with ſuch coſts
" to be awarded as ſhall be thought convenient, according
" to the intent and purport of the ſaid decree."

" PROVIDED ALWAYS, That if any perſon take any
" tenement for a leſs rent than it was accuſtomed to be
" letten for, by reaſon of great ruin or decay, burning,
" or ſuch like occaſions or misfortunes; ſuch perſons, his
" executors or aſſigns, ſhall pay tythes only after the rate
" of the rent reſerved in his leaſe, and none otherwiſe, as
" long as the ſame leaſe ſhall endure."

[*Of every ten ſhillings rent by the year.*] *See ſect.* 2. of the foregoing decree. It was reſolved in the caſe of *Meadhouſe* againſt *Taylor*, that a rent for half a year, and afterwards for another half year, is a yearly rent, or a rent by the year within the meaning of the decree. Gibſ. Cod. 1221. Noy, 130.

[*Of all houſes.*] In the caſe of *Green* v. *Piper*, *Eaſt.* 34 *Eliz.* it was ſuggeſted, in order to hinder the granting of a conſultation, that the houſe belonged to a priory which was diſcharged of tythes by bull. But the court replied, that by the *common law* houſes paid no tythes; and the right in the preſent caſe ſubſiſting immediately on this ſtatute, which lays them upon every houſe; no exemption ſhall be allowed but to ſuch houſes as are ſpecially exempted by the ſtatute itſelf. Cro. Eliz. 276. Mo. 912. Gibſ. Cod. 1221.

[*By reaſon of any fine or income paid beforehand, or by any other fraud or covin.*] *See ſect.* 3. of the ſaid decree. *M.* 5 *Jac.* between *Skidmore* and *Eire*, plaintiffs, in the prohibition againſt *Bell*, parſon of *St. Michael, Queenhithe*, in *London*. The caſe was this: the ſaid parſon libelled before the Chancellor of *London* for the tythes of an houſe called 2 Inſt. 660.

called the *Boar's Head* in *Bread-ſtreet*, in the ſaid pariſh, the ancient farm-rent whereof was *five pounds* at the time of the ſaid decree and after; and that of late a new leaſe was made of the ſaid houſe, rendering the rent of *five pounds* a year, and over that a great income or fine, which was covenanted and agreed to be paid yearly at the ſame day; that the rent was paid as a ſum in groſs, and that ſo much rent might have been reſerved for the ſaid houſe as the rent reſerved and the ſum in groſs amounted unto: which reſervation and covenant were made to defraud the ſaid parſon of the tythes of the true rent of the ſaid houſe, which to him did appertain by the purport and true intention of the ſaid decree; and in this caſe four points were reſolved by the court: 1. If ſo much rent be reſerved, as was accuſtomed to be paid at the making of the ſaid decree (whatſoever fine or income be paid); that the parſon can aver no covin; for the words of the decree be, "Where any leaſe is or ſhall be made of any dwelling-houſe by fraud or covin in reſerving leſs rent than "hath been accuſtomed:" ſo as if the accuſtomed rent be reſerved, no fraud can be alleged; for the fraud by the decree is, when leſſer rent than was then accuſtomed to be paid is reſerved, or if no rent at all be reſerved, for then tythe ſhall be paid according to the rent that then was laſt before reſerved to be paid, ſo as the decree conſiſteth upon four points; firſt, where the accuſtomed rent was reſerved; ſecondly, where the rent was increaſed, then the tythes ſhould be paid according to the whole rent; thirdly, where leſſer rent was reſerved; and fourthly, where no rent was reſerved, but had been formerly reſerved. And this act and decree were very beneficial for the clergy of *London*, in reſpect of that which they had before. And the defendant in his libel confeſſeth that the accuſtomed rent was reſerved; and therefore no cauſe of ſuit. 2. It was reſolved, That as to ſuch houſes as were never letten to farm, but inhabited by the owner, this is *caſus omiſſus*, and ſhall pay no tythes by force of the decree. 3. It was reſolved, that where the decree ſaith, "Where no rent "is reſerved by reaſon of any fine or income paid before-"hand:" albeit no fine or income be paid in that caſe, yet if no rent be reſerved, the parſon ſhall have his tythes according to the decree: for that is put but for an example or cauſe why no rent is reſerved; and whether any fine

or

or income were paid or no, is not material as to the parſon. 4 It was reſolved, That the parſon could not ſue for the ſaid tythes in the *eccleſiaſtical* court; for that the act and decree that raiſed and gave theſe kind of tythes did limit and appoint how and before whom the ſame ſhould be ſued for, and did appoint new and ſpecial judges to hear and determine the ſame; and in the end it was awarded that the prohibition ſhould ſtand.

[*Upon complaint made.*] *See ſect.* 19. of the foregoing decree. In the aforeſaid caſe of *Meadhouſe* v. *Taylor*, it was held by the court that the complaint ought to be *in writing* (and not by word of mouth only), in nature of a *monſtrans de droit*, declaring all the title. Noy, 130. Gibſ. Cod. 1223

[*To the mayor.*] Purſuant to the aforeſaid caſe of *Skidmore* v. *Eire*, diverſe prohibitions have been granted (when tythes were ſued for upon this ſtatute) to the *eccleſiaſtical* court. But when it was pleaded in the year 1658, that the right of tythes, upon the foundation of this act could not be cognizable in the *Exchequer*, by reaſon of the proviſion therein made for determining of all controverſies before the lord mayor or lord chancellor; it was held clearly by the barons, that the court of *Exchequer* had juriſdiction in the cauſe, becauſe the act had no negative words in it. Upon which I ſhall only obſerve, ſays Dr. Gibſon, that if affirmative words will not exclude the temporal court, it may be hard to find a good reaſon why, according to the foregoing judgments, they ſhould exclude the ſpiritual court. Gibſ. 1223.

On a bill for a tythe of houſes not within the city of *London*, and ſo not within ſtatute 37 *Hen.* 8. It was admitted by the plaintiff, that this demand was againſt common right, and he did not allege this payment to be either by cuſtom or preſcription, but that this was the only proviſion for St. *Saviour's*, *Southwark*, in right of which church the plaintiff claimed: it was proved that the houſes in the pariſh had, ſince the year 1653, generally paid *twelve ſhillings per annum*; but no proof that the defendant's houſe had paid for *twenty-five years*, but by one ſingle witneſs; yet the court decreed an account without directing an iſſue. Bunb. Rep. 100. Hil. 1721.

On a bill by the vicar of *Cripplegate* for *two ſhillings and nine-pence per pound*, according to the rent of the houſes, purſuant to the decree and ſtatute 27 *Hen.* 8. and

to

to ſupport the juriſdiction of this court (the ſtatute giving power to the lord mayor of *London* to determine, &c.), the following caſes were cited, *Hard.* 116. 2 *Inſt.* 660. *Lit. Rep.* 102. 141. *Degge* 351. *Watſon* 387. *Cro. Car.* 596. *Hob.* 11. Several inſtances were given, where the *two ſhillings and nine-pence per pound* had been decreed, as the caſe of St. *Bride's, Townley* v. *Wilſon, Mich.* 1705; *Sawyer* v. *Montford,* 1694; *Grant* v. *Cannon, Mich.* 5 *W. & M. Sheffield* v. *Serjeant,* 1658; St. *Swithin's, Humfieville* v. *Plumſted*; *Aldgate* pariſh, 21 *Car.* the difficulty was, that here appeared to have been paid from time to time ſeveral payments, as *ten ſhillings* for *T's* houſe, *ſix ſhillings* for *Borkett's*, and *four ſhillings* for *Whiccet's*, and the charges in the vicar's books appeared to be the ſame, though in ſome of them the payments ſometimes varied, and the right of the vicar cannot be deſtroyed but by an uniform conſtant payment. (See the ſtatute.) This being a thing of great conſequence, the court took time to conſider of this decree.

Bunb. 106, 107. Paſch. 1721. Dr. Bennett. v. Treppas and others.

In *Michaelmas* term, 1722, the court gave judgment: Baron *Price* held, that there ought to be a general decree for the plaintiff; *Mountague, Page,* and *Gilbert,* directed an iſſue to try whether there had been ſuch cuſtomary payments as was ſet up by defendants; and a verdict was for the defendants. From this decree *Bennett* appealed, and the decree was confirmed.

Bunb. 143.

An iſſue was directed in this cauſe, to try whether there had been any variation in the payment of tythes, or ſums of money in lieu of them, for houſes in *London*, according to ſtatute 37 *Hen.* 8. It was now moved, that the plaintiff ſhould produce at the trial the books of the former rectors; and although it was objected that theſe were properly private books, and the plaintiff's own evidence, yet as they had before been produced at the hearing of the cauſe, and as the iſſue to be tried is to inform the conſcience of the court, the jury ought to have all the lights the court can give them: *Per curiam*, the plaintiff was ordered to produce theſe books at the trial.

After all, notwithſtanding the ſettlement by the aforeſaid decree, divers preſcriptions for the payment of leſſer rates than the parſons might require by the ſaid ſettlement, (as to pay *ten ſhillings* for the tythe of an houſe, although the rent thereof was *forty pounds* a year or more) have been

been gained and allowed. But upon the occaſion of the fire of *London* in the year 1666, as to the churches and houſes thereby conſumed, another ſtatute was made, namely ſtat. 22 & 23 *C.* 2. *c.* 15. (intitled, *An act for the better ſettlement of the maintenance of the parſons, vicars, and curates, in the pariſhes of the city of London*) which is as follows: "Whereas the tythes in the city of *London* "were levied and paid with great inequality, and are, "ſince the late dreadful fire there, in the rebuilding of "the ſame, by taking away ſome houſes, altering the "foundation of many, and the new erecting of others, "ſo diſordered, that in caſe they ſhould not for the time "to come be reduced to a certainty, many controverſies "and ſuits of law might thence ariſe; it is therefore "enacted, that the actual certain tythes of the pariſhes "within the ſaid city and liberties thereof, whoſe churches "have been demoliſhed, or in part conſumed in the late "fire; and which ſaid pariſhes, by virtue of an act of "this preſent parliament, remain and continue ſingle, as "heretofore they were, or are by the ſaid act annexed or "united into one pariſh reſpectively, ſhall be as follows "that is to ſay, the annual certain tythes, or ſum of "money in lieu of tythes;" of

	£.	s.
The pariſh of Alhallows, Lombard-ſtreet	110	0
St. Bartholomew, Exchange	100	0
St. Bridget, *alias* Brides	120	0
St. Bennet Finck	100	0
St. Michael, Crooked-lane	100	0
St. Chriſtopher	120	0
St. Dionis Backchurch	120	0
St. Dunſtan in the Eaſt	200	0
St. James, Garlick-hythe	100	0
St. Michael, Cornhill	140	0
St. Michael, Baſſiſhaw	132	11
St. Margaret, Lothbury	100	0
St. Mary, Aldermanbury	150	0
St. Martin, Ludgate	160	0
St. Peter, Cornhill	110	0
St. Stephen, Coleman-ſtreet	110	0
St. Sepulchre	200	0
St. Alhallows, Bread-ſtreet, and St. John Evangeliſt	140	0
Alhallows the Great and Alhallows the Leſs	200	0

List of pariſhes as regulated, under Stat. 22 and 23 Car. 2. as to tythes.

St.

	£.	s.
St. Alban, Wood ſtreet, and St. Olives, Silver-ſtreet	170	0
St. Anne and Agnes, and St. John Zachary	140	0
St. Auguſtine, and St. Faith	172	0
St. Andrew Wardrobe, and St. Anne, Black-friars	140	0
St. Antholin, and St. John Baptiſt	120	0
St. Bennet, Grace-church, and St. Leonard, Eaſt-cheap	140	0
St. Bennet, Paul's wharf, and St. Peter's, Paul's wharf	100	0
Chriſt-church, and St. Leonard, Foſter-lane	200	0
St. Edmund the King, and St. Nicholas Acons	180	0
St. George, Botolph-lane, and St. Botolph, Billingſgate	180	0
Lawrence Jury, and St. Magdalen, Milk-ſtreet	120	0
St. Magnus, and St. Margaret, New Fiſh-ſtreet	170	0
St. Michael Royal, and St. Martin, Vintry	140	0
St. Matthew, Friday-ſtreet, and St. Peter Cheap	150	0
St. Margaret Pattons, and St. Gabriel Fenchurch	120	0
St. Mary at Hill, and St. Andrew Hubbard	200	0
St. Mary Woolnoth, and St. Mary Woolchurch	160	0
St. Clement Eaſtcheap, and St. Martin Orgars	140	0
St. Mary Ab-church, and St. Lawrence Pountney	120	0
St. Mary Aldermary, and St. Thomas Apoſtle	150	0
St. Mary le Bow, St. Pancras, Soper-lane, and Alhallows, Honey-lane	200	0
St. Mildred Poultry, and St. Mary Colechurch	170	0
St. Michael Wood ſtreet, and St. Mary Staining	100	0
St. Mildred, Bread-ſtreet, and St. Margaret Moſes	130	0
St. Michael, Queenhithe, and Trinity	160	0
St. Magdalen, Old Fiſh ſtreet, and St. Gregory	120	0
St. Mary Somerſet, and St. Mary Mounthaw	110	0
St. Nicholas, Cole-abbey, and St. Nicholas, Olaves	130	0
St. Olave, Jewry, and St. Martin, Ironmonger-lane	120	0

St.

St. Stephen, Walbrook, and St. Bennet, Sherehog	100	0
St. Swythin, and St. Mary Bothaw	140	0
St. Vedaſt *alias* Foſter's, and St. Michael Quern	160	0

Which reſpective ſums of money to be paid in lieu of tythes within the ſaid reſpective pariſhes, and aſſeſſed as herein after is directed, ſhall be the reſpective certain actual annual maintenance (over and above glebes and perquiſites, gifts and bequeſts, to the reſpective parſon, vicar, and curate of any pariſh for the time being, or to their ſucceſſors reſpectively, or to others for their uſe) of the ſaid reſpective parſons, vicars, and curates, who ſhall be legally inſtituted, inducted, and admitted into the reſpective pariſhes aforeſaid. *ſ.* 3.

And for the more equal levying of the ſame upon the ſeveral houſes, buildings, and other hereditaments within the reſpective pariſhes, aſſeſſments were ordered to be made before *July* 24, 1671, upon all houſes, ſhops, warehouſes, and cellars, wharfs, keys, cranes, waterhouſes, tofts of ground (remaiuing unbuilt) and all other hereditaments whatſoever (except parſonage and vicarage houſes) the whole reſpective ſum by this act appointed, or ſo much of it as is more than what each impropriator is by this act injoined to allow. *ſ.* 4, 5, 6, 7.

And three tranſcripts of the aſſeſſments were to be made; one to be depoſited amongſt the records of the city, another in the regiſtry of the biſhop of *London*, and another in the pariſh veſtry reſpectively, for a perpetual memorial thereof. *ſ.* 8.

The ſums aſſeſſed to be paid to the reſpective parſons, vicars, and curates, *at the four moſt uſual feaſts*, to wit, at the Annunciation of the Bleſſed Virgin, the Nativity of St. *John* Baptiſt, the Feaſt of St. *Michael* the Archangel, and the Nativity of our Bleſſed Saviour, *or within fourteen days* after each of the feaſts aforeſaid, by equal payments; the reſpective payments thereof to begin and commence only from ſuch time as the incumbent ſhall begin to officiate or preach as incumbent. *ſ.* 9.

Impropriators ſhall pay what *bona fide* they have uſed and ought to pay to the reſpective incumbents at any time before the ſaid late fire; the ſame to be computed as part of the maintenance of ſuch incumbent. *ſ.* 10.

And

And if any inhabitant ſhall refuſe or neglect to pay the incumbent the ſum appointed by him to be paid (the ſame being lawfully demanded upon the premiſes), it ſhall be lawful for the lord-mayor, upon oath to be made before him of ſuch refuſal or neglect, to grant warrants for the officer or perſon appointed to collect the ſame, with the aſſiſtance of a conſtable, in the day-time, to levy the ſame by diſtreſs and ſale of the goods of the party ſo refuſing or neglecting; reſtoring to the owner the overplus over and above the ſaid arrears, and the reaſonable charges of making ſuch diſtreſs. *ſ.* 11.

And if the lord-mayor ſhall refuſe or neglect to execute any of the powers to him given by this act; it ſhall be lawful for the lord-chancellor or lord-keeper, or two of more of the barons of the Exchequer, by warrant under their hands and ſeals reſpectively, to do and perform what the ſaid lord mayor might or ought to have done in the premiſes. *ſ.* 12.

Provided that no court or judge, eccleſiaſtical or temporal, ſhall hold plea of or for any the ſum or ſums of money due and owing, or to be paid by virtue of this act; other than the perſons hereby authorized to have cognizance thereof: nor ſhall it be lawful to, or for any parſon, vicar, curate, or incumbent, to convene or ſue any perſon aſſeſſed as aforeſaid, and refuſing or neglecting to pay the ſame, in any court or courts, or before any judge or judges, other than what are authorized and appointed by this act for the hearing and determining of the ſame, in manner aforeſaid. *ſ.* 14.

PROVIDED ALSO, That it ſhall be lawful for the wardens and minor canons of *St. Paul's*, parſons and proprietors of the rectory of the pariſh of *St. Gregory* aforeſaid, to receive and enjoy all tythes, oblations, and duties, ariſing or growing due within the ſaid pariſh, in as large and beneficial manner as formerly they have or lawfully might have done. *ſ.* 15.

Shaw's Par. L. 45. And for the better recovering the ſums of money which ſhall be due according to the directions of this act, and for the levying of arrears where the occupier removes from the premiſes, or the houſes have ſtood empty, a decree was made in the year 1713, by *Harcourt*, chancellor, aſſiſted by the barons *Bury* and *Price*, in the caſe of *Savage* v. *Wood*, clerks, againſt *Harding and others.*

The

The ſtatutes concerning building fifty new churches in or near London and Weſtminſter, and providing for the miniſters thereof, are as follow:—

Stat. 9 *Ann. cap.* 22. *ſect.* 2. The money ariſing by the duty on coals imported into the *Thames*, of *two ſhillings per* chaldron from 14th *May* 1716, and *three ſhillings* till 28th *Sept.* 1724, is to be paid into the *Exchequer*, and appropriated for building *fifty* new churches, of ſtone and other materials, with towers or ſteeples to each, and for purchaſing ſites of churches and church-yards, and burying-places, in or near *London* and *Weſtminſter*, and for making ſuch chapels, as are capable thereof, pariſh churches; and for purchaſing houſes for miniſters, and for applying 4000*l. per ann.* out of the ſaid duties, towards repairing the collegiate church of *St. Peter, Weſtminſter*, and 6000*l. per ann.* towards the finiſhing *Greenwich Hoſpital.* Stat. 9 Ann. cap. 22. ſect. 2.

There ſhall be *fifty* churches built, whereof one ſhall be in the pariſh of *Greenwich*. *ſ.* 3.

Chapels already built, if fit, may be converted into pariſh churches. *ſ.* 4.

The queen, by letters patent, may nominate commiſſioners, who ſhall inform themſelves in what pariſhes the new churches are moſt neceſſary to be built, and of proper places to build them, and of church-yards and burying-places to be bought; and ſhall limit the diſtinct pariſhes, &c. *ſ.* 5.

Stat. 10 *Ann. c.* 11. *ſect.* 1. The commiſſioners for *fifty* new churches, or any *five* of them, are required to meet as often as they ſhall have occaſion, for building *fifty* new churches. Stat. 10 Ann. cap. 11. ſect. 1.

The commiſſioners may purchaſe lands, *&c.* as they ſhall think proper for the ſaid new churches, and for church-yards, and for miniſters' houſes. *ſ.* 2.

The lands ſo purchaſed ſhall be conveyed to *five* or more of the commiſſioners and their heirs, and they are to cauſe the churches to be built, and chapels already built to be made pariſh-churches, and to provide houſes for miniſters; and church-yards to be made and incloſed. *ſ.* 3

They may provide more than one cemetery for any new pariſh-church, and without the bounds of the pariſh; and the ground purchaſed for that purpoſe ſhall be taken

as part of the parish, after the purchase and consecration thereof, and shall be discharged from any rates to the other parish out of which it was taken. *s.* 4.

The treasury may issue, out of the money arising by virtue of this or the former act 9 *Anne*, *c.* 22. such sums as five of the commissioners shall think necessary for purchasing lands, *&c.* which money shall be paid to such person as the crown shall appoint treasurer thereof, not being a commissioner; and shall be accounted for by such treasurer, and disbursed according to such orders as he shall receive from the commissioners for the said uses; such treasurer to be accountable to the Exchequer, and to give security approved of by the treasury. *s.* 7.

The commissioners may, by a parchment writing inrolled in *Chancery*, ascertain the bounds of the site of each new church, and minister's house and church-yard, and also the district of each parish for every new church; and after the inrolment of such writing and consecration of the church, such district shall be a distinct parish, except touching rates, relief for the poor, and rates for the highways. *s.* 8.

The commissioners may, by writing inrolled in *Chancery*, take a part of any of the large parishes in and about *London* and *Westminster*, where any new church shall be made, and unite the same to any other lesser parish next adjoining, wherein a church is already built. *s.* 9.

There shall be a rector in every new church, and where there is a morning preacher in any chapel which shall be converted into a parish-church, such preacher shall, after the consecration, be the first rector, without any admission, institution, or induction; and in every new church, the first rector shall be appointed by the queen; and he and his successors are incorporated, and shall be called the rector of such new church, by the name that shall be given to it in the act of consecration; and the freehold of the new church, *&c.* shall be in him and his successors; and he and they may purchase lands, not exceeding the yearly value of 200*l.* for each church. *s.* 10.

The commissioners may enquire of the right of patronage, *&c.* of any church from which any part shall be taken as aforesaid, and treat with the person who hath the

the right, for the dividing ſuch pariſh, and the tythes and dues thereunto belonging, to take effect after the firſt voidance, and for ſettling the right of patronage of each new church. *ſ.* 11.

Such ſettlement ſhall bind infants, *&c.* *ſ.* 12.

Until ſuch ſettlement can be made of the right of patronage in every new pariſh, the crown ſhall preſent upon any avoidance. *ſ.* 14.

The rectors of every new church (except the preſent preacher in a chapel) ſhall be preſented, inſtituted, collated, and inducted, as other rectors are; and they and the churchwardens ſhall be ſubject to the ordinary. *ſ.* 15.

This act ſhall not deprive the ſucceſſors of the rectors or vicars of the pariſh-churches, out of which any part ſhall be taken, of any tythes, or other profits, until ſuch agreement for dividing the pariſh be made and inrolled. *ſ.* 16.

This act ſhall not prejudice any proprietor of a chapel made a pariſh-church, or his intereſt in any pews, without his conſent under hand and ſeal. *ſ.* 17.

If any proprietor ſhall ſell his intereſt in a pew in any chapel, it ſhall be ſold only to an inhabitant of the pariſh. *ſ.* 18.

The firſt church-wardens, overſeers of the poor, and ſurveyors, and other pariſh officers, of every new pariſh, ſhall be elected by the commiſſioners, out of the inhabitants, within a month after the conſecration of the church; and all ſucceeding pariſh officers ſhall be choſen and ſworn yearly in every new pariſh, according to law. *ſ.* 19.

The commiſſioners, with the conſent of the ordinary, may, by writing inrolled in *Chancery*, name a number of the inhabitants of each new pariſh to be veſtrymen, who ſhall have the ſame power as the veſtrymen of the pariſh out of which the new pariſh is taken; and if there are no ſelect veſtrymen in that pariſh, then as the veſtrymen of the pariſh of *St Martin in the Fields* in *Middleſex* now have; and upon the death or removal, *&c.* of any veſtryman, the reſt may chuſe another, being an inhabitant and houſholder. *ſ.* 20.

All parochial cuſtoms, *&c.* uſed in any pariſh ſhall, notwithſtanding ſuch diviſion, continue in both pariſhes. *ſ.* 21.

The commiſſioners, with the conſent of the miniſters, churchwardens and overſeers of the poor, and of the veſtry, or of *twenty* of the principal inhabitants where there is no ſelect veſtry, from which pariſh any part ſhall be taken, and of the pariſh to which it ſhall be appointed, or elſe the reſpective miniſters, pariſh officers, veſtrymen, or principal inhabitants, with conſent of the ordinary, by writing inrolled in Chancery, may make a perpetual diviſion of ſuch pariſhes as to church-rates, the poor, highways, and other pariſh rates; and may ſettle any annual ſum, or conſideration in the reſpect thereof, or for equality of ſuch diviſion. *ſ.* 22.

Until ſuch agreement ſhall be made, the pariſh rates ſhall be aſſeſſed and levied through all parts which belong to ſuch preſent pariſh. *ſ.* 23.

The pariſh officers, with the veſtry or principal inhabitants of each pariſh, may meet every year on *Tueſday* in *Eaſter* week, or oftener, upon notice given on the *Sunday* before, and after morning ſervice aſſeſs the rates for the poor, *&c.* and other pariſh rates, and apportion the ſaid rates upon every part of ſuch preſent pariſh ſo divided; which rates ſhall be aſſeſſed and collected in each diſtrict by the proper officers, who ſhall diſtribute the rates in reaſonable proportions for every diſtrict, for the relief of poor, *&c.* and other pariſh rates within ſuch diſtrict. *ſ.* 24.

When ſuch yearly agreements ſhall not be made for diſtributing ſuch rates, the pariſh officers for the diſtrict then remaining to ſuch preſent church may aſſeſs and collect of the inhabitants, through the limits of ſuch pariſh, all rates and taxes, as they might have done before any diviſion. *ſ.* 25.

This act ſhall not invalidate any eccleſiaſtical law of the church of *England,* or deſtroy any of the rights of the biſhop of *London,* or any other local ordinary, or any archdeacon, chancellor or official. *ſ.* 26.

He and they may viſit, inſtitute and exerciſe *eccleſiaſtical* juriſdiction in all pariſhes to be erected or divided, as in any other pariſh. *ſ.* 27.

The monies, to be iſſued in purſuance of this and the former act for building churches, ſhall be iſſued without fee. *ſ.* 30.

No burial ſhall be in or under any of the churches intended

tended to be built. And the commiſſioners may ſettle what ſum ſhall be paid to the rector and church-officers for burials in the church-yards. *ſ.* 31.

By 12 *Ann. cap.* 17. *ſect.* 2. The new church in the *Strand*, after it is finiſhed, ſhall be deemed one of the fifty churches to be built in purſuance of the act 9 *Ann. cap.* 22, *&c.*

In every new church to be erected in purſuance to the act 10 *Ann. cap.* 11. within *Stepney* pariſh, the firſt rector ſhall be nominated by the principal and ſcholars of *Brazen Noſe College* in *Oxford*, and in every chapel in the ſame pariſh which ſhall be converted into a parochial church. *ſ.* 4.

By 1 *Geo.* 1. *c.* 23. *ſect.* 2. All monies which ſhall be raiſed by the duty of *three ſhillings per* chalder upon coals imported into the *Thames*, from the 27th of *September* 1724, to the 28th of *September* 1729, by virtue of this act, ſhall be brought into the *Exchequer*; and are appropriated for the providing maintenances for the miniſters in the new churches to be erected in and about *London* and *Weſtminſter*, and ſhall be iſſued in ſuch manner as ſhall be directed by parliament. Stat. 1 Geo. 1. cap. 23. ſect. 2.

The King may by letters patent appoint commiſſioners, who, or any *five* of them, ſhall have power to execute all the powers, *&c.* in the ſaid acts; and alſo to inform themſelves in what manner a due maintenance may be provided for the ſaid miniſters. *ſ.* 4.

By 4 *Geo.* 1. *c.* 14. *ſect.* 1. The commiſſioners appointed by virtue of the two acts 9 *Ann. cap.* 22. and 10 *Ann. cap.* 11. ſhall cauſe the church of *St. Giles in the Fields* to be rebuilt, and the ſaid church ſhall be taken as one of the *fifty* new churches. Stat. 4 Geo. 1. cap. 14. ſect. 1.

The profits of the fourth gallery ſhall be applied to the uſe of the poor of the ſaid pariſh. *ſ.* 2.

By 5 *Geo.* 1. *cap.* 9. *ſect.* 4. All the monies ariſing by the duties on coals imported into the port of *London* after *Lady-day* 1719, and before *Lady-day* 1751, ſhall be paid into the Exchequer, and appropriated to the ſeveral uſes in this act preſcribed. Stat. 5 Geo. 1. cap. 9. ſect. 4.

For raiſing the ſum of 360,000*l.* in ſuch proportions as ſhall be needful for building the ſaid churches, a yearly fund of 21,000*l.* ſhall after *Lady-day* 1719, during thirty-

two years, be a ſecurity for paying principal and intereſt of the ſaid 360,000*l.* ſ. 5.

The treaſury are to direct the officers of the *Exchequer* to receive by way of loan ſuch ſums as the commiſſioners ſhall think neceſſary for the buildings, repairs, and other purpoſes, by the acts 9 *Ann. cap.* 22. and 10 *Ann. cap.* 11. intended, and to allow intereſt at 4*l. per cent.* and the monies ſo lent ſhall be tax free; and the lenders ſhall have tallies of loans, and orders for payment; the principal to be paid in courſe, and the intereſt every three months; and no fee ſhall be taken for payment; and the ſaid fund of 21,000*l. per annum* ſhall be liable to ſatisfy ſuch orders without being diverted to any other uſe, on pain of *treble coſts* to the party grieved; and ſuch orders ſhall be aſſignable according to the courſe of the *Exchequer.* ſ. 6.

The monies ariſing on credit of the ſaid 21,000*l. per annum*, and all the monies of the ſaid fund, ſhall be applied towards building of churches, *&c.* repairing *Weſtminſter Abbey*, finiſhing *Greenwich Hoſpital*, making proviſion for miniſters, *&c.* ſ. 7.

The principal of the loans, together with the monies ſupplied out of the funds, ſhall not exceed 360,000*l.* ſ. 8.

The treaſury are to iſſue out the monies ariſing by loan, and out of the monies of ſuch fund, ſuch ſums as the commiſſioners ſhall think neceſſary; which ſhall be paid to ſuch perſon as his Majeſty ſhall appoint to be the treaſurer, who is to diſburſe the ſame according to ſuch orders as he ſhall receive from the commiſſioners, and is to be accountable in the *Exchequer*, and ſhall give ſecurity, to be approved by the treaſury. ſ. 9.

All the powers and clauſes in the ſaid acts of 9 *Ann. cap.* 22. and 10 *Ann. cap.* 11. and 1 *Geo.* 1. *cap.* 23. or in any other act for building the ſaid churches, ſhall continue. ſ. 11.

The King may appoint commiſſioners to execute the powers in the ſaid recited acts and in this act, touching the building and repairing of the ſaid churches. ſ. 12.

Stat. 12 Geo. 1. cap. 39. ſect. 1. By 12 *Geo.* 1. *cap.* 39. *ſect.* 1. The ſum of 2500*l.* part of the ſum of 360,000*l* by the act 5 *Geo.* 1. *cap.* 9. appointed to be raiſed, ſhall be allotted for the rector of the new church of *St. Mary le Strand*, and the treaſurer ſhall diſpoſe of the ſaid 2500*l.* according to ſuch orders as he

ſhall

ſhall receive from the commiſſioners, in purchaſing lands, *&c.* to be conveyed to the rector of the ſaid new church and his ſucceſſors for ever; and in the mean time place out the ſame by order of the commiſſioners, on real ſecurities or public funds.

And for a farther proviſion for the rector of Saint *Mary le Strand*, the ſum of *one hundred and twenty five pounds per ann.* ſhall be raiſed by an equal pound-rate on the inhabitants (except the rector, and ſuch as ſhall not pay to the poor) within the diſtrict appointed for the pariſh of St. *Mary le Strand:* and for that purpoſe the rector, churchwardens, and veſtry, are yearly on *Eaſter Tueſday*, or within fourteen days after, on notice given in the church after divine ſervice the *Sunday* before, to make an aſſeſſment on the inhabitants for raiſing by an equal pound-rate, ſuch yearly ſum for the maintenance of the rector; and if the veſtry ſhall neglect to make ſuch aſſeſſment, it ſhall be lawful for the churchwardens alone, at any time within *fourteen days* after ſuch neglect, to make ſuch aſſeſſment. *ſ.* 2.

If the churchwardens ſhall neglect to make the aſſeſſment, they ſhall forfeit *one hundred pounds*, to be recovered by any perſon who will ſue. *ſ.* 3.

The aſſeſſment ſhall be allowed by two juſtices of *Middleſex*, and the ſums ſhall be collected by perſons nominated by the veſtry or churchwardens; and the collector refuſing to act ſhall forfeit to the crown *one hundred pounds*, to be recovered as above. *ſ.* 4.

If any perſon ſhall refuſe to pay the ſum aſſeſſed, it ſhall be lawful for the collector, by warrant of two juſtices, to levy the ſame by diſtreſs and ſale of goods. *ſ.* 5.

If any perſon ſhall find himſelf aggrieved by any aſſeſſment, on complaint made and notice in writing, within *ſix days* after demand of the monies aſſeſſed, given to the collectors, the juſtices of peace of *Middleſex*, at their next quarter-ſeſſions, are to hear and determine the ſame. *ſ.* 6.

Where any houſes, *&c.* ſhall be unoccupied, and where any inhabitants ſhall remove during the continuance of the aſſeſſment, the monies aſſeſſed not exceeding one quarterly payment ſhall be levied on the next tenant. *ſ.* 7.

The churchwardens, within *fourteen days* after every aſſeſſment, and the appeal determined, ſhall make two

tranſcripts thereof in parchment, and ſubſcribe the ſame; and within *two days* ſhall deliver one of them to the rector, and the other ſhall be ſet up for *three weeks* in the moſt public place in the church, and afterwards in the veſtry. *ſ.* 8.

The produce of the ſaid yearly ſum of *one hundred and twenty-five pounds* ſhall be the annual maintenance of the rector, over and above ſuch ſurplice-fees as belong to the rector (*Eaſter* offerings excepted) and the houſe for the habitation of the rector, and over and above all gifts and benefits, not exceeding in the whole the yearly value of *two hundred pounds*. *ſ.* 9.

The rectory of St. *Mary le Strand* ſhall not be held *in commendam*. *ſ.* 10.

If the commiſſioners ſhall purchaſe a houſe for the habitation of the rector without the bounds of the pariſh (but near thereunto), the houſe ſhall, after the inrolment in *Chancery* of the bargain and ſale, whereby the ſame ſhall be conveyed, be deemed part of the pariſh of St. *Mary le Strand*. *ſ.* 11.

The pariſh-clerk of St. *Mary le Strand* ſhall be a member of the corporation of pariſh-clerks. *ſ.* 12.

By ſtat. 13 and 14, if any ſuit be commenced for any thing done in purſuance of this act, the defendant may plead the general iſſue, *&c.* and on verdict, *&c.* ſhall recover treble coſts; and this act ſhall be a public act.

Stat. 13 Geo. 1. cap. 35. ſect. 1.

Stat. 13 *Geo.* 1. *cap.* 35. The pariſhioners of the pariſh of St. *Catherine*, *Cree-church*, otherwiſe *Chriſt Church*, *London*, ſhall pay to the maſter and fellows of *Magdalen College*, *Cambridge*, during their eſtate in fee in the impropriate rectory and tythes of the ſaid pariſh, *one hundred and fifty pounds per ann.* clear of deductions, at the four uſual feaſt days, in lieu of all tythes, oblations, offerings, fruits, profits, and advantages, from the owners or occupiers of any houſes, *&c.* within the ſaid pariſh, and for the impropriator's providing the pariſh with a curate. *ſ.* 1.

If default ſhall be made in payment of the ſaid yearly ſum of *one hundred and fifty pounds thirty days* after any of the ſaid feaſts; oath of ſuch default being made before any of the barons of the *Exchequer*, or before the lord mayor of *London*, or any juſtice of peace for that city, it ſhall be lawful for the ſaid baron, *&c.* to ſummon ſuch perſons

perſons as ſhall have been appointed to collect the ſaid monies, and ſuch other perſons as they ſhall think neceſſary, and to inquire of ſuch default; and if ſuch collector hath received any monies, and neglected to pay the ſame, it ſhall be lawful for the ſaid baron, *&c.* to iſſue warrants to diſtrain the goods of ſuch collectors, towards ſatisfaction of ſuch money, and to ſell ſuch goods; and for want of goods, to iſſue their warrant for impriſoning ſuch deficient collectors, till payment be made; and if ſuch collector ſhall not ſatisfy the monies for which he ſhall ſtand committed, within ten days, or if the duties ſhall not be paid to the collector, it ſhall be lawful for the ſaid maſter and fellows, *&c.* to diſtrain for the arrears, upon any the goods of the pariſhioners; and the goods ſo diſtrained to keep four days, to be appraiſed by two perſons, and ſold for payment of the money. PROVIDED, That no diſtreſs be made on the goods of any perſon for more than *five pounds*. PROVIDED, That ſuch payment ariſing by diſtreſs ſhall in no wiſe diſcharge the impriſonment of any collector till payment be made to a veſtry; which being paid, ſhall be applied in eaſe of the next rate: and if the goods of any inhabitant be diſtrained, the collector ſhall ſatisfy the money, together with his charges, out of the firſt money that ſhall come to his hands. *ſ.* 3.

The church-wardens and veſtry are required yearly, on the *twenty-fifth* of *March* (notice being given in the church the *Sunday* before), to make an aſſeſſment by a pound-rate, upon all occupiers of houſes or tenements in the pariſh, for raiſing the ſaid yearly ſum of *one hundred and fifty pounds* in lieu of tythes, *&c.* which rates ſhall be ſubſcribed by the alderman of the ward, or any two juſtices of peace for the city; and the ſums ſhall be collected quarterly, by ſuch perſons as ſhall by the veſtry be yearly appointed. *ſ.* 4.

If any perſon ſhall find himſelf aggrieved by any rate, on complaint to the alderman of the ward, or to any two juſtices of the peace for the city, within ten days after notice of ſuch rate given to the party aſſeſſed, the ſaid alderman or juſtices, ſummoning the party and the church-wardens, ſhall have power within *five days* to hear and determine the matter. *ſ.* 5.

If

If any perſon ſhall refuſe the office of collector (not being privileged from ſerving pariſh offices), it ſhall be lawful for the veſtry to impoſe a fine on ſuch perſon, not exceeding *ten pounds*, which ſhall be levied by diſtreſs and ſale of goods, by warrant of the lord mayor and two juſtices of peace, to be applied to the uſe of the poor; and it ſhall be lawful for any veſtry to appoint other collectors inſtead of thoſe refuſing, dying, failing, or removing. *ſ.* 6.

Collectors ſhall not be obliged to ſerve that office more than *one year*, and ſhall be exempted from the office of overſeer or collector for the poor. *ſ.* 7.

Every collector ſhall quarterly or oftener account for, and pay to the receiver appointed by the veſtry, all money collected over and above the ſaid *one hundred and fifty pounds*; and in caſe of neglect, the like remedy ſhall be had, as is provided for the recovery of the ſum; and ſuch overplus monies ſhall be diſpoſed of as the common ſtock of the pariſh. *ſ.* 8.

If any perſon ſhall neglect to pay the money aſſeſſed, *four days* after demand, or perſonal notice given, or left in writing at the place of abode of ſuch perſon, then (the time of appeal being lapſed, or the appeal determined) it ſhall be lawful for the collector in the day-time to enter into any houſe of ſuch perſon (taking to his aſſiſtance the conſtable or other peace officer) to diſtrain the goods of ſuch perſon, and to ſell the ſame for ſatisfaction of ſuch rate. *ſ.* 9.

If any loſs or deficiency ſhall happen in the ſaid rates, the ſame ſhall be made good by re-aſſeſſment to be added to the next rate; and if the churchwardens and veſtry ſhall neglect to make ſuch rates, and to appoint collectors *twenty days*, it ſhall be lawful for ſuch churchwardens alone within *ten days* after ſuch neglect, to make ſuch rates, and to appoint collectors; and if ſuch churchwardens ſhall neglect, *&c.* they ſhall be committed to priſon till ſuch rates, *&c.* be made, and collectors appointed. *ſ.* 10.

The inhabitants ſhall repair the chancel of the ſaid pariſh church, and receive all profits from burials in the church, and all other profits which ſhall ariſe by the chancel; the cuſtomary dues payable to the curate excepted. *ſ.* 11.

The

The yearly ſum of *ſeventy pounds* ſhall be paid by the maſter and fellows of *Magdalen College* in *Cambridge*, out of the ſums to be paid to them by this act, to the officiating curate, clear of all deductions, by four equal payments on the feaſt-days before mentioned; and it ſhall be lawful for the perſons appointed to collect the rates, out of the monies collected, to pay the ſaid *ſeventy pounds per annum* to ſuch curate; and the curate ſhall take to his own uſe the ſurplice-fees. *ſ.* 12.

By ſtatutes 13 and 14, If any action ſhall be commenced againſt any perſon for what he ſhall do in purſuance of this act, he may plead the general iſſue, and on a verdict, *&c.* ſhall recover treble coſts, and this act ſhall be a public act.

By 1 *Geo.* 2. *cap.* 15. *ſect.* 12. For raiſing a maintenance for the rector of the new church in the Hamlet of *Spitalfields*, within the pariſh of St. *Dunſtan*, *Stepney*, the ſum of 3000*l.* part of the monies intended by the act 1 *Geo.* 1. *cap.* 23. to be raiſed for proviſion for miniſters of the fifty new churches, ſhall be allotted for the ſhare which the rector of the new church ſhall have. Stat. 1 Geo. 2. cap. 15. ſect. 12.

In lieu of a certain ſum of money, to be by the commiſſioners appointed to be paid to the rector for every burial, and towards raiſing the yearly ſum of *one hundred and twenty-five pounds*, agreed to be raiſed within the diſtrict, and paid towards the maintenance of the rector, there ſhall be paid to the churchwardens of the new pariſh the ſums following, *viz.* for every burial in the church-yards, ſuch ſums as the veſtry ſhall, with the conſent of the ordinary, ſettle, not exceeding *thirty ſhillings*, nor leſs than *two ſhillings* (fees on the burial of any perſon who received alms, to be paid by the overſeers of the poor); and for the liberty of making vaults, or ſetting up any monument, ſuch ſums as the veſtry ſhall appoint; and from the conſecration of the church, and the induction of a rector, it ſhall be lawful to depoſit any corpſe in the vaults under the church or ſteeple, ſo as the floor of ſuch vaults be not broke; and ſuch money as ſhall be appointed by the veſtry for depoſiting the corpſe, ſhall be paid to the churchwardens towards the maintenance of the rector. *ſ.* 2.

It ſhall be lawful for the churchwardens to make vaults, and ſet up monuments, and depoſit corpſe, without any hindrance by the rector. *ſ.* 3.

Towards

Towards the further maintenance of the rector, the churchwardens shall yearly pay to him *one hundred and twenty-five pounds*, without deduction for taxes, at the four usual feasts, out of the monies received in pursuance of this act: and if such monies shall be deficient, then out of any public monies belonging to the parish, not arising by any poor-rate or pound-rate, as the vestry shall direct, which other money shall be made good out of the next surplus of the burial-monies. *s.* 4.

If default be made in payment of the yearly sum of *one hundred and twenty five pounds* to the rector *twenty-one days* after any of the days of payment, the rector may recover the same against the churchwardens by action of debt, &c. *s.* 5.

It shall be lawful for the rector, instead of proceeding by action, to make his complaint of such default to any one justice of peace for *Middlesex*; and on such complaint, and oath made of the same in arrear, the justice by warrant may summon the persons making default, at such time as he shall appoint, not exceeding *four days* from the date of the warrant; and if sufficient cause shall not be shewn (oath being made of due notice of such summons, in case the party concerned shall not attend), the justice may by warrant cause all such monies in arrear to be levied by distress and sale of goods, the costs to be ascertained on oath before the justice; and if sufficient distress cannot be had, the justices are to commit the offenders to the common gaol till they have paid all arrears. *s.* 6.

All succeeding churchwardens shall be liable to make good, out of any parish monies in their hands, all arrears of the said yearly sum of *one hundred and twenty-five pounds*, as aforesaid, so as such arrear do not exceed *one year's payment*, and so as such action be commenced, or complaint made against the succeeding churchwardens, within *three months* after their being sworn into the office. *s.* 7.

The rector, churchwardens, and overseers for the poor of the new parish, and all persons who have served or paid fines for the office of churchwarden and overseers of the poor for the hamlet of *Spitalfields*, or the new parish, so long as they shall continue householders within the parish

pariſh, and pay to the poor's rate, ſhall be the veſtrymen of the new pariſh, and ſhall meet from time to time, on notice to be publiſhed in the church by order of the rector, churchwardens, or overſeers, on the Lord's day next preceding, after divine ſervice; and the ſaid veſtrymen ſhall elect a lecturer, as alſo churchwardens, ſideſmen, pariſh-clerk, and all other officers, who were uſually choſen for the hamlet; and alſo elect and put out the ſexton, grave-diggers, and all other officers and ſervants to be employed about opening the pews, or otherwiſe in the church; and the lecturers ſhall be admitted by the rector to the uſe of the pulpit. *ſ.* 9.

The diſtrict ſet out for a new pariſh ſhall be a diſtinct pariſh; the name of which ſhall be given to the church in the act of conſecration; and the inhabitants ſhall be diſcharged as well againſt the rector of the new church as againſt the rector of the pariſh of *Stepney*, from all *ſmall tythes*, *Eaſter offerings*, *garden-pennies*, and all other duties ariſing within the new pariſh. *ſ.* 10.

All great tythes, or *modus* or compoſition in lieu thereof, within the new pariſh, ſhall continue to be paid to the principal and ſcholars of *King's Hall* and college of *Brazen Noſe*, in *Oxford*, or the perſons to whom they belong. *ſ.* 11.

The proviſions hereby made for the rector ſhall be the annual maintenance of the rector, over and above ſurplice-fees, and the houſe for his habitation, and over and above all gifts and bequeſts to the rector; provided, that no ſurplice-fees upon any burial ſhall be taken by the rector, unleſs where he ſhall be deſired to perform the burial office, or part thereof, in the church, and the corpſe be carried into the church, and then only ſuch ſurplice-fees as ſhall be ſettled by the veſtry, with the conſent of the ordinary, who are alſo to ſettle all other fees payable to each other officer belonging to the church. *ſ.* 14.

The payments for repairing the highways within the pariſh of *Stepney* ſhall be the ſame as they were before this act. *ſ.* 18.

By 2 *Geo.* 2. *c.* 30. Towards raiſing a maintenance for the rector of the new church in the hamlet of *Wapping*, *Stepney*, in the pariſh of St. *Dunſtan*, *Stepney*, in *Middleſex*, *three thouſand pounds* ſhall be allotted as the ſhare which Stat. 2 Geo. 2. cap. 30. ſect. 1.

which the rector shall have out of the monies intended by the act 1 *Geo.* 1. *cap.* 23. *s.* 1.

For the better maintenance of the rector, there shall be paid to the churchwardens, for every burial in the churchyards, such sums as the vestrymen, with consent of the bishop, shall settle, not exceeding *thirty shillings*, or less than *two shillings* (fees for burials of the poor to be paid by the overseers); and for liberty of making vaults or monuments in the church-yard or church, such sums as the vestrymen shall appoint; and corpse may be deposited in any vaults belonging to the church or steeple, so as the floor be not broken up; and the money for depositing the corpse shall be paid to the churchwardens towards the maintenance of the rector. *s.* 2.

Towards the better maintenance of the rector, the churchwardens shall pay him the yearly sum of *one hundred pounds, tax-free*, at the four usual feasts, out of the monies received in pursuance of this act. *s.* 4.

The rector, churchwardens, and overseers of the poor, and all persons who shall pay *two shillings per* month to the poor, and no others, shall be vestrymen of the new parish, and shall meet, *&c.* *s.* 9.

Stat. 3 Geo. 2. cap. 3. sect. 1. Stat. 3 *Geo.* 2. *cap.* 3. Towards raising a maintenance for the rector of the new church of St. *Mary* of *Stratford Bow*, in the county of *Middlesex*, the sum of *three thousand five hundred pounds*, part of the monies intended by the act 1 *Geo.* 1. *cap.* 23. shall be allotted as the share which the rector of the said new church shall have out of the same monies; and if no purchase can be obtained in *three years*, the rector shall not be intitled to any other interest than 3*l. per cent.* till such purchase can be obtained. *s.* 1.

For the better maintenance of the rector, the churchwardens are impowered to raise monies, on the pews in the church and chancel, by letting them to inhabitants, not to exceed *forty-six pounds per annum*, and also the sums following, *viz.* for every burial, in the church-yard, such sums as the vestry, with the allowance of the ordinary, shall appoint, not exceeding *forty shillings*, nor less than *three shillings* for every burial (such fees for the burial of any person who received alms from the parish to be paid by the overseers); and for liberty to make any vault, or set up any monument in the church or cemetery, such sums

ſums as the veſtry ſhall appoint, and it ſhall and may be lawful to depoſit corpſe in any vault, under the church or or ſteeple, ſo as the floor of ſuch vault be not broken; and the money for depoſiting the corpſe ſhall be paid to the churchwardens for the better maintenance of the rector. *ſ.* 2.

The churchwardens ſhall yearly pay, out of any pariſh-monies in their hands, to the rector, the ſum of *forty pounds*, without deduction for taxes, at the four uſual feaſts. *ſ.* 4.

The rectors of the new pariſh of *Saint Mary of Stratford Bow* ſhall be intitled to all ſurplice-fees and perquiſites, over and above the houſe for habitation; and all gifts and profits, *ſmall tythes*, *Eaſter-offerings*, and *garden-pennies*, excepted. *ſ.* 7.

The new pariſh ſhall be deemed a diſtinct pariſh, by the name of *St. Mary of Stratford Bow*; and be divided from the pariſh of *St. Dunſtan Stepney*, and ſhall be diſcharged from all *ſmall tythes*, *Eaſter-offerings*, *garden-pennies*, and all other duties. *ſ.* 9

By 3 *Geo.* 2. *cap.* 17. Towards raiſing a maintenance for the rector of the new church in the hamlet of *Limehouſe*, in the pariſh of *St. Dunſtan in Stepney*, *Middleſex*, and part of the hamlet of *Ratcliff*, the ſum of 3500*l.* part of the money intended by the act of 1 *Geo.* 1. *cap.* 23. ſhall be allotted for the ſhare which the rector ſhall have. *ſ.* 1. Stat. 3 Geo. 2. cap. 17. ſect. 1.

Towards making further proviſion for maintenance of the rector, the churchwardens ſhall pay to ſuch rector, out of any pariſh monies, the yearly ſum of *ſixty pounds*, without deduction for taxes, at the four uſual feaſts. *ſ.* 5.

The rector, churchwardens, and overſeers, and all other perſons who ſhall pay *twelve ſhillings* each book to the poor of the new pariſh, and none others, ſhall be veſtrymen, and ſhall meet and elect a lecturer. *ſ.* 10.

The following part of this act is to the ſame effect of the act for *Spitalfields* church, which ſee before, in ſtat. 2 *Geo.* 2. *c.* 10. *ſect.* 10. except the following ſection.

The inhabitants of that part of the hamlet of *Ratcliff*, which is intended to be part of the new pariſh, who ſhall pay *two ſhillings and ſix-pence per* month to the poor's rates of *Ratcliff*, ſhall be veſtrymen of the new pariſh; but

but they ſhall not intermeddle in any affairs which concern the hamlet of *Limehouſe*, in thoſe reſpects wherein that hamlet and the ſaid part of the hamlet of *Ratcliff* are to continue diſtinct. *ſ.* 10.

Stat. 3 Geo. 2. cap. 19. ſect. 1.

Stat. 3 *Geo.* 2. *c.* 19. *ſect.* 1. Towards raiſing a maintenance for the rector of the new church near *Bloomſbury-market*, in the pariſh of *St. Giles in the Fields*, in *Middleſex*, the ſum of *three thouſand pounds*, part of the monies intended by the act 1 *Geo.* 1. *cap.* 23. ſhall be allotted for the ſhare which the rector ſhall have.

The inhabitants of *St. Giles in the Fields* ſhall pay to the treaſurer of the commiſſioners *one thouſand two hundred and fifty pounds*, and the ſaid treaſurer is to lay out the ſame as he is to lay out the before-mentioned *three thouſand pounds*, and ſhall pay the produce of the ſaid *one thouſand two hundred and fifty pounds* to the rector of the new church, for his better maintenance; and if no purchaſe can be had within five years, the rector ſhall not be intitled to any other intereſt than *three pounds per cent.* *ſ.* 2.

The annual profits of the lands, *&c.* to be purchaſed with the ſaid ſums of *three thouſand pounds*; and *one thouſand two hundred and fifty pounds* ſhall be the annual maintenance of the rector of the new church, over and above ſurplice fees, *Eaſter* offerings, and other dues, and the houſe for his habitation, and over and above all gifts, not exceeding the yearly value of *two hundred pounds.* *ſ.* 3.

The commiſſioners, with the conſent of the veſtry of the new pariſh, ſhall aſcertain what ſums ſhall be paid to the rector, and each officer, for every burial; which ſums ſhall be regiſtered in *Doctors Commons.* *ſ.* 5.

The vaults and rooms under the church, excepting thoſe belonging to the rector's dwelling-houſe, and alſo the veſtry-room, together with the ſeats in the church, ſhall be veſted in the churchwardens, for the public uſes of the new pariſh, under the directions of the veſtry; but the vaults ſhall not be diſpoſed of, or applied to any uſe, without the conſent of the rector. *ſ.* 6.

The lecturer, or afternoon preacher, for the new pariſh, ſhall be elected by the rector and veſtrymen, in the veſtry-room; and if there ſhall be an equality of voices, the perſon preſiding ſhall have a caſting vote; and the lecturer ſhall be permitted by the rector to have the uſe of the pulpit. *ſ.* 10.

There

There ſhall not be hung up in the ſteeple of the new church more than one bell. *ſ.* 11.

The churchwardens, overſeers of the poor, and other pariſh officers for the new pariſh, ſhall be annually choſen, as ſuch reſpective officers are for the pariſh of *St. Giles in the Fields*; and all rates for the poor of both pariſhes ſhall be made jointly; and the workhouſe ſhall be for the joint uſe of both pariſhes. *ſ.* 13.

By the 14, 15, and 17 ſections. All rights are ſaved to the Duke of *Bedford*.

Actions for things done in purſuance of this act, to be brought within *three months*, and ſhall be laid in *Middleſex*; and the defendant may plead the general iſſue, *&c.* and on a verdict, *&c.* recover *treble coſts*, and that this act ſhall be a public act.

By 3 *Geo.* 2. *c.* 33. The ſum of 3500*l.* part of the monies, intended by the act 1 *Geo.* 1. *cap.* 23. ſhall be allotted for the ſhare which the miniſter of the new church in the pariſh of St. *Nicholas, Deptford*, in the counties of *Kent* and *Surry*, ſhall have. *ſ.* 1. Stat. 3 Geo. 2. cap. 33. ſect. 1.

For further proviſion for the maintenance of the rector, the churchwardens ſhall pay him the yearly ſum of *ſeventy pounds*, out of any pariſh-monies in their hands, at the four uſual feaſt-days, without abatement for taxes, *&c.* and if the monies fall ſhort, then out of any public monies, in their hands, not ariſing by any poor's or pound-rate, as the veſtry ſhall direct; to be replaced out of the next ſurplus ariſing by burials. *ſ.* 4.

In default of payment of the ſaid yearly ſum of *ſeventy pounds, twenty-eight days* after the ſame ought to be paid, the rector may ſue for the ſame againſt the churchwardens, *&c.* *ſ.* 5.

The miniſter, churchwardens, overſeers for the poor, and all other pariſhioners who ſhall pay to the poor, ſhall be the veſtrymen of the new pariſh, and ſhall meet on notice in the church, by order of the rector, churchwardens, and overſeers, or either of them, on the preceding Lord's day, after divine ſervice; and ſhall elect churchwardens, ſideſmen, pariſh-clerk, and all other officers for the ſaid pariſh; and alſo may elect and amove the clerk, ſexton, and grave-digger, and all other officers and ſervants employed in opening pews or otherwiſe about the

church: and may alſo nominate a lecturer, who ſhall be admitted by the rector to have the uſe of the pulpit. *ſ.* 8.

The diſtrict ſet out for a new pariſh, ſhall be a diſtinct pariſh, divided from the pariſh of *St. Nicholas, Deptford*, and ſhall be diſcharged from payment of *Eaſter offerings, garden-pennies*, and all other dues. *ſ.* 9.

If any perſon ſhall be aggrieved by any rate, he may appeal to the quarter-ſeſſions of *Kent* or *Surrey*, as the premiſes aſſeſſed ſhall lie. *ſ.* 10.

All tythes ariſing within the new pariſh, which uſually were the property of the vicar of the old pariſh, ſhall be continued to him and his ſucceſſors. *ſ.* 11.

The miniſter and his ſucceſſors, and other perſons having occaſion to go to the houſe built for the miniſter, ſhall have liberty to paſs through the church-yard, by ſuch road as the veſtry ſhall appoint; which road ſhall not be leſs than twenty feet wide, from *Butt-lane* to the miniſter's houſe. *ſ.* 12.

The proviſions hereby made for the miniſter, *&c.* ſhall be the annual maintenance of the rector of the ſaid church, over and above ſurplice-fees, and the houſe for his habitation; and over and above all gifts to him; but no ſurplice-fees upon burials ſhall be demanded, unleſs where he ſhall be requeſted to perform the burial office, or part thereof, in the church, and the corpſe be carried into the church, then only ſuch fees as ſhall be ſettled by the veſtry, with the allowance of the ordinary; who are to ſettle all fees payable to each officer belonging to the church. *ſ.* 13.

When the vicarage of the old pariſh church ſhall become vacant, the firſt rector of the new church ſhall be nominated by his Majeſty; and all ſucceeding rectors of the new church ſhall be preſented by the patron of the old church. *ſ.* 15.

The rectory of the new pariſh ſhall not be held *in commendam*. *ſ.* 16.

The churchwardens ſhall provide three palls for burying the dead in the church-yard or vaults under the church, and ſhall take for the uſe of them not exceeding *ten ſhillings*; and no perſon ſhall bring any pall into the church-yard without paying to the churchwardens, not exceeding *ten ſhillings*, which ſhall be applied as the veſtry ſhall appoint. *ſ.* 17.

All

All donations that have been given to the parish of St. *Nicholas*, *Deptford*, shall be equally divided, for the benefit of the old parish and the new. *f.* 19.

All rates for the poor of both parishes shall be raised by two moieties, *viz.* one out of the old parish, and the other out of the new; and the workhouse and house of correction is to be for the joint use of both parishes. *f.* 21.

The two parishes shall be jointly subject for repairing the roads in the upper part of the parish of *Deptford*, which is a district for the new parish. *f.* 22.

By sections 23 and 24. Defendants may plead general issue to any action commenced for things done in pursuance of this act; and this act shall be a public act.

All glebe-land that did belong to the parish of St. *Nicholas*, *Deptford*, shall be vested in the churchwardens of the new parish, to be applied towards raising the *seventy pounds per annum*, to be paid by the churchwardens to the rector of the new parish. *f.* 26.

By 4 *Geo.* 2. *cap.* 20. The church of *Gravesend* shall be rebuilt as one of the fifty new churches directed to be built by the acts 9 *Ann. c.* 22. and 10 *Ann. c.* 11. and it shall be lawful for the commissioners to pay *five thousand pounds*, to be disposed of according to the direction of the mayor of *Gravesend* and others, trustees for rebuilding the said parish-church. *f.* 1. Stat. 4 Geo. 2. cap. 20. sect. 1.

By 5 *Geo.* 2. *cap.* 4. The church of *Woolwich* shall be rebuilt as one of the fifty new churches; and it shall be lawful for the commissioners to pay 8000*l.* according to the direction of the right honourable the lord *Vere Beauclerk* and others, trustees for rebuilding the said church. *f.* 1. Stat. 5 Geo. 2. cap. 4. sect. 1.

By 6 *Geo.* 2. *cap.* 8. The church of St. *George the Martyr* in *Southwark*, shall be rebuilt as one of the fifty new churches; and the commissioners are required to pay *six thousand pounds* to the order of the right honourable the earl of *Ailsford* and others, trustees for rebuilding the said church. *f.* 1. Stat. 6 Geo. 2. cap. 8. sect. 1.

By 6 *Geo.* 2. *cap.* 11. The sum of 3500*l.* part of the monies intended by act 1 *Geo.* 1. *cap.* 23. to be applied for the making provision for the ministers of the fifty new churches, shall be allotted for the share which the rector of the new parish church near *Horsleydown* (taken out of St. *Olave's* parish) shall have; and the treasurer Stat. 6 Geo. 2. cap. 11. sect. 1.

of the commiſſioners is to lay out the ſaid ſum in purchaſing lands. *ſ.* 1.

Out of the money appropriated for building the ſaid fifty new churches, there ſhall be iſſued ſuch ſums, not exceeding *one thouſand one hundred pounds*, as ſhall be neceſſary for building a dwelling-houſe for the miniſter; and for paying the church-yard, and ſetting up gates and rails, *&c.* *ſ.* 2

It ſhall be lawful for the churchwardens of the ſaid old and new pariſhes reſpectively, to make vaults, and ſet up monuments and grave ſtones in the church-yards; and for the churchwardens of the new pariſh to ſet up ſuch monuments in the new church, and depoſit corpſe in the ſame, without hindrance of the miniſter. *ſ.* 6.

The churchwardens of the new pariſh ſhall pay, out of any pariſh-monies in their hands, unto the miniſter, the yearly ſum of *ſixty pounds*, without deduction of taxes, at the four uſual feaſts. *ſ.* 7.

The miniſter, and all other pariſhioners occupying tenements of the yearly value of *ten pounds*, as the ſame ſhall be rated to the land-tax, ſhall be veſtrymen, and ſhall meet from time to time, upon public notice read in the church, by order of the miniſter, churchwardens, and overſeers, or either of them, on the Lord's day next preceding, after divine ſervice; and the ſaid veſtrymen ſhall elect churchwardens and other officers, and elect and put out the ſexton, grave-diggers, and all other officers and ſervants to be employed in opening the pews, or otherwiſe about the church, and exerciſe the ſame powers as they might have done in caſe they had been named veſtrymen by the commiſſioners; and may elect a lecturer, if they think fit. *ſ.* 11.

The diſtrict ſet out for a new pariſh ſhall be a diſtinct pariſh from the pariſh of St. *Olave's Southwark*, and ſhall be diſcharged as well againſt the miniſter of the new church, as againſt the rector of St. *Olave's*, from *Eaſter* offerings; and alſo to be exempted from all other dues payable to the rector of St. *Olave's*. *ſ.* 12.

The proviſions hereby made for the miniſter of the new church ſhall be in lieu of all *moduſes*, *Eaſter* offerings; and other demands; excepting ſuch ſurplice-fees, and other perquiſites as he ſhall be allowed by this act to receive; and ſuch other fees and perquiſites as the veſtry, with the allowance of the ordinary, ſhall appoint. *ſ.* 13.

The

The rectory of the new intended pariſh ſhall not be taken or held *in commendam*. *ſ.* 15.

The churchwardens ſhall provide three palls for burying the dead, and ſhall for the uſe of the ſame demand any ſum not exceeding *ten ſhillings*, nor leſs than *two ſhillings*; and no perſon ſhall bring any pall into the church-yard, unleſs ſuch perſon ſhall pay to the churchwardens ſuch ſum as they ſhall demand, not exceeding *ten ſhillings*; which ſums ſo taken ſhall be applied as the veſtry ſhall appoint; provided that the palls belonging to St. *Olave's* may be uſed at any funeral in the burying-places that are to be uſed in common between the old and new pariſhes, without paying any fee to the churchwardens of the new pariſh. *ſ.* 16.

All the burying-grounds within the old and new pariſhes ſhall be held in common between both pariſhes, and the ſurplice-fees for burials of perſons, dying within the old pariſh, where the ſervice ſhall be performed by the miniſter of the old pariſh, or any other officiating for him, ſhall be paid to the rector of the old pariſh; and ſurplice-fees for perſons dying within the new pariſh, where the ſervice ſhall be performed by the miniſter of the new pariſh, ſhall be paid to the rector of the new pariſh; and all other fees ſhall be paid to the churchwardens of ſuch of the diſtricts where the perſon buried did reſide; provided, that if any ſtranger ſhall be buried in either of the ſaid pariſhes, the fees for palls, and the burial-fees, ſhall be equally divided between the two pariſhes. *ſ.* 18.

The inhabitants of the new pariſh ſhall be intitled, in common with the inhabitants of the old pariſh, to all benefits ariſing from the free ſchool. *ſ.* 19.

All donations that have been given to the pariſh of St. *Olave's*, *Southwark*, ſhall be divided in manner following, *viz. three-fifths* for the old pariſh, and out of the other *two-fifths* there ſhall be paid to the churchwardens of the old pariſh the yearly ſum of *twenty-nine pounds*, free from taxes, for the benefit of the poor, and the reſidue of the ſaid *two-fifths* ſhall be for the benefit of the new pariſh. *ſ.* 20.

The rector, and ſenior churchwarden, of each of the pariſhes, ſhall jointly collect the ſeveral charities and donations; and ſhall, with the conſent of the veſtry of each pariſh, make leaſes of the lands and tenements given for

the charitable purpoſes in ſuch gifts and donations mentioned, as the churchwardens of St. *Olave's, Southwark*, might have done. *ſ.* 21.

The ſeveral churchwardens ſhall give half yearly accounts of the charities to any two juſtices of the peace for *Surrey*, not being inhabitants of either of the pariſhes, within *ten days* after the feaſt of the Annunciation and St. *Michael*; and in caſe they ſhall not appear upon ſummons, the juſtices may iſſue a warrant for bringing the party offending before ſuch juſtice; and in caſe the party ſhall refuſe to account, ſuch juſtice may commit the perſon ſo refuſing to the county gaol till he ſhall have accounted; and in caſe the party accounting ſhall neglect to pay the money in his hands as the juſtices ſhall direct, it ſhall be lawful for ſuch juſtices to iſſue warrants for levying the ſame on the goods of the offender, and to cauſe ſale to be made thereof, in caſe they ſhall not be redeemed within *five days*; and where goods of ſuch offender cannot be found, to commit ſuch offender to the county gaol, till ſuch money be paid, or until the major part of the veſtry ſhall deſire that the offender be diſcharged; but the party ſhall be at liberty to appeal to the next quarter-ſeſſions. *ſ.* 22.

The workhouſe and furniture, and the ground adjoining, ſhall be divided, *viz. three-fifth* parts ſhall be the property of the old pariſh, and the other *two-fifths* the property of the new pariſh, ſubject to the yearly rent of a *pepper-corn*, payable to the truſtees of the free-ſchool of St. *Olave's, Southwark*; and all perſons who ſhall obtain any ſettlement in that part of the workhouſe which ſhall be allotted to the old pariſh, ſhall be maintained by the old pariſh. *ſ.* 23.

By ſections 26 and 27, Defendant may plead the general iſſue to actions for things done in purſuance of theſe enactments, and this act ſhall be a public act.

Stat. 6 Geo. 2. cap. 21. ſect. 1.

By 6 *Geo.* 2. *c.* 21. The ſum of 3500*l.* part of the monies applied for making proviſion for the miniſters of the fifty new churches, ſhall be allotted for the rector of the new church in *Old-ſtreet*. *ſ.* 1.

Towards raiſing the yearly ſum of 120*l.* agreed to be raiſed within the Lordſhip part of the pariſh of *Cripplegate*, for the maintenance of ſuch rector, there ſhall be paid to the churchwardens of the new pariſh, upon the burial of

any

any perſon in the church-yards of the new pariſh, ſuch ſum of money as the veſtrymen ſhall, with the allowance of the ordinary, appoint; and for the liberty of making a vault, or ſetting up any monument, or grave-ſtone, ſuch money as the veſtrymen ſhall appoint; and it ſhall be lawful to depoſit any corpſe in the vaults under the church or ſteeple ſo as the floor of ſuch vault be not broke. *ſ.* 2.

The churchwardens ſhall pay out of any pariſh monies in their hands, unto ſuch rector, the yearly ſum of *one hundred and twenty pounds*, without deduction for taxes, at the four uſual feaſts. *ſ.* 4.

The rector, churchwardens, and overſeers for the poor of the ſaid new pariſh, and all other perſons who have ſerved, or paid fines for offices for the ſaid diſtrict or new pariſh, ſo long as they continue houſeholders within the pariſh, and pay to the poor's rate, ſhall be the veſtrymen of the ſaid pariſh; and the ſaid veſtrymen may elect a lecturer, as alſo churchwardens, ſideſmen, and all other officers for the pariſh; and alſo elect, and put out, the ſexton, grave-diggers, and other officers and ſervants. *ſ.* 9.

When the vicarage of the old pariſh church ſhall become vacant, the firſt rector of the new church ſhall be nominated by his Majeſty, and all ſucceeding rectors of the ſaid new church ſhall be collated by the dean of St. *Paul's*, *London*. *ſ.* 14.

All charities and donations that have been given to the pariſh of St. *Giles*, *Cripplegate*, ſhall be enjoyed by the vicar or churchwardens of the preſent pariſh of St. *Giles*, *Cripplegate*, and the churchwardens of the new intended pariſh, by ſuch proportions as they were before. *ſ.* 16.

The burying-ground called the *Bear and Ragged-ſtaff* burying-ground, ſhall be to the ſole uſe of the old pariſh. *ſ.* 17.

The highways ſhall be repaired as by the laws now in being; and all money which ſhall be expended in repairing the ſame, ſhall be paid in the proportions following, *viz.* *five eight parts* by the new intended pariſh, and the other *three eight parts* by the old pariſh, commonly called the Freedom part. *ſ.* 19.

The pariſh-clerk of the new pariſh, ſhall be a member of the corporation of maſters, wardens, aſſiſtants, and brethren of the pariſh-clerks. *ſ.* 20.

After the clerk's place of the old pariſh ſhall become vacant, the rector of the new pariſh ſhall pay to the vicar of the old pariſh of St. *Giles, Cripplegate,* the yearly ſum of *ten pounds*, without deduction of taxes, at the four uſual days of payment; and in caſe any of the payments ſhall be behind *twenty-one days*, the vicar may ſue for the ſame againſt ſuch rector by action of debt. *ſ.* 24.

Stat. 6 Geo. 2. cap. 25. ſect. 20.

By 6 *Geo.* 2. *cap.* 25. The commiſſioners of the treaſury may pay out of the monies reſerved for building *fifty* new churches, unto the ſubdean, treaſurer, and ſteward of the collegiate church of St. *Peter, Weſtminſter, four thouſand pounds*, for the repair of the ſaid collegiate church; and alſo to pay to the ſaid ſubdean, treaſurer, and ſteward, the further ſum of *one thouſand two hundred pounds* for finiſhing the dormitory. *ſ.* 20.

CHAP.

CHAP. IX.

A Table of Monasteries, Abbeys, &c. exempt from Tythes, being dissolved by Stat. 31 *Hen.* 8.

A TABLE of Monasteries* of the yearly value of 200*l.* or upwards, dissolved by Statute of 31 *H.* 8.

Bedfordshire.

Monasteries.	*Order.*	*Founded.*	*Value.* *l.*	*s.*	*d.*
Newham, pr.	C. Aust.	T. Hen. 1.	293	15	11
Elmiston, ab.	Ben.	T. W. Conq.	285	12	10
Warden, ab.	Cist.	1139.—	389	16	6
Chickfand, pr.	Wh. C. Gill.	T. W. Rufus.	212	3	5
Dunstable, ab.	C Aust.	T. Hen. 1.	344	13	3
Wooburn, ab.	Cist.	T. John.	391	18	2

Berkshire.

Reading,	Ben.	T. Hen. 1.	1938	14	3
Buslesham, ab.	C. Aust.	13 Ed. 3.			
Abington, ab.	Ben.	720			

Buckinghamshire.

Ashrugg coll.	C. Aust.	T. Edw. 1.	416	16	4
Notely, ab.	C. Aust.	1112.—	437	6	8
Missenden, ab.	Ben.	1293.—	261	14	6

Cambridgeshire.

Thorney, ab.	Ben.	972.—	411	12	11
Barewell, pr.	C. Aust.	1092.—	256	11	10

* The lands belonging to these religious houses were discharged from Tythes.

Cheshire.

Monaſteries.	*Order.*	*Founded.*	*Value.* l.	s.	d.
St. Worburge, ab.	Ben.	1095.—	1093	5	11
Combermeer, ab.	Ciſt.	1134.—	225	9	7

Cornwall.

Bodmin, pr.	C. Auſt.	936.—	270	0	11
Launceſton, ab.	C. Auſt.	T. W. Conq.	354	0	11
St. Germain's, ab.	C. Auſt.	T. Ethalſtan.	248	8	0

Cumberland.

Carliſle, pr.	C. Auſt.	T. W. Rufus.	418	3	4
Holme Coltrom, ab.	Ciſt.	1135.—	427	19	3

Derbyshire.

Darly, ab.	C. Auſt.	T. H. 2.	258	14	5

Devonshire.

Ford, ab.	Ciſt.	1133.—	374	10	6
Newnham, ab.	Ciſt.	ab. 1246.	227	7	8
Dinkeſwell, ab.	Ciſt.	1201.—	294	18	6
Hertland, ab.	C. Auſt.	T. H. 2.	306	3	2
Torre, ab.	Præm.	T. Ric. 1.	396	0	12
Buckfaſt, ab.	Ciſt.	T. H. 2.	466	11	2
Plimpton, ab.	Ciſt.	T. Edw. 1.	241	17	9
Taviſtock, ab.	Ben.	961.—	902	5	7
Exon, pr.	Clun.	T. Hen. 1.	502	12	9

Dorsetshire.

Abbotſbury,	Ben.	ab. 1016.	390	19	2
Middleton, ab.	Ben.	T. Ethalſtan.	538	13	11
Tarrent. ab.	Ciſt.	By Henry 3.	214	7	9
Stafton, ab.	Ben	941.—	1166	8	9
Cerne, ab.	Ben.	T. Edgar.	515	17	10
Sherburn, ab.	Ben.	ab. 370.—	682	14	7

Durham.

Durham.

Monasteries.	*Order.*	*Founded.*	*Value,* l.	s.	d.
St. Cuthbert, ab.	Ben.	ab. 842.—	1366	10	9
Tinmouth, pr.	Ben.	— —	397	11	5

Essex.

Berking, ab.	Ben.	680.—	862	12	5
Stratford Langthorn, ab.	Ciſt.	1135.—	511	16	3
Waltham, ab.	C. Auſt.	ab. 1060.	900	4	3
Walden, ab.	Ben.	1136.—	372	18	11
St. Oſwith, ab.	C. Auſt.	1120.—.	677	1	2
Colcheſter, ab.	C. Auſt.	T. Hen. 1.	523	17	0

Glouçestershire.

Briſtol, ab.	C. Auſt.	T. Hen. 1.	670	13	11
Hayles, ab.	Ciſt.	1246.—	357	7	8
Winchcomb, ab.	Ben.	787.—	759	11	9
Tewkeſbury, ab.	Ben.	715.—	1598	1	5
Cirenceſter, ab.	C. Auſt.	T. Hen. 1.	1051	7	11
King's-wood, ab.	Ciſt.	1139.—	244	11	2
Glouceſter, ab.	Ben.	680. —	1946	5	9
Lanthony, pr.	C. Auſt	1136.—	641	19	11

Hampshire.

St. Swithin's Winton, ab.	Ben.	634.—	1507	17	2
Hyde, ab.	Ben.	by Alfred.	865	18	0
Wherwell, ab.	Ben.	by Edgar.	339	8	7
Romſey, mon.	Ben.	907.—	393	10	10
Twinham, pr.	C. Auſt.	before 1042.	312	7	0
Belloloco, ab.	Ciſt.	1024.—	326	13	2
Southwick, pr.	C. Auſt.	T. H. 1.	257	4	4
Titchfield, ab.	Præm.	T. H. 3.	249	16	1

Hertfordshire.

St. Alban's, ab.	Ben.	755.—	2102	7	1

Hunting-

Huntingdonshire.

Monasteries.	*Order.*	*Founded.*	*Value.* l.	s.	d.
St. Neot's, ab.	Ben.	ab. T. Hen. 3.	241	11	4
Ramsey, ab.	Ben.	969.—	1716	12	6

Kent.

St. Austin's, Cant.	Ben.	605.—	1413	4	11
Ledis, pr.	C. Aust.	1119.—	362	7	4
Feversham, ab.	Clun.	1147.—	286	12	7
Boxley, ab.	Cist.	1144.—	204	4	11
Roffen, ab.	Ben.	600.—	486	11	5
Mallin, ab.	Ben.	by Edmund.	218	4	2
Dartford, ab.	C. Aust.	1372.—	380	0	0

Lancashire.

Whalley, ab.	Cist.	1172.	371	9	3

Leicestershire.

Leicester, ab.	C. Aust.	1143.—	951	14	5
Croxdon, ab.	Præm.	ab. R. 1.	381	0	10
Launda, ab.	C. Aust.	T. W. Rufus.	99	3	3

Lincolnshire.

Lincoln, St. Cath. pr.	Gilb.	T. H. 2.	202	5	9
Kirkstead, ab.	Cist.	1239.—	286	2	7
Revesly, ab.	Cist.	1142.—	267	2	4
Thorton, ab.	C. Aust.	1139.—	594	17	10
Barney, ab.	Ben.	712.—	366	6	1
Croyland, ab.	Ben.	716.—	1803	15	10
Spalding, ab.	Ben.	1052.—	761	8	11
Sempringham, ab.	Gilb.	1148.—	317	4	1
Epworth, mon.	Castli.	1386.—	237	15	1

London and Middleſex.

Monaſteries.	*Order.*	*Founded.*	*Value.* l.	s.	d.
St. John Jeruſalem,	——	1000.—	23	5	12	8
St. Barth. Smithfield,	C. Auſt.	1102.—	653	15	0
St. Mary Biſhopſgate,	pr.	1187.—	478	6	6
Clerkenwell, pr.	Ben.	T. Stephen.	264	19	0
London minors,	Ben.	T. Edw. 1.	318	8	5
Weſtminſter, ab.	Ben.	T. Edgar.	3471	0	2
Sion, ab.	C. Auſt.	by Hen. 5.	1731	8	4
London, a houſe of,	Carth.	T. Edw. 3.	648	0	4
St. Clare without Aldgate, mon.	——	1292.—	418	8	5
St. Mary, Charterhouſe, mon.	Carth.	1379.—	736	2	7
St. John, Holiwell,	Bl. M.	1318.—	347	1	4
St. Mary Eaſt-Smithfield, ab.	Ciſt.	1360.—	802	11	10

Norfolk.

Thetford, ab.	Clun.	1103.—	312	14	4
Wymundham, ab.	Ben.	1139.—	211	16	6
Hulmo, ab.	Ben.	by Canute	583	17	0
Weſtderham, ab.	Præm.	T. Hen. 2.	228	0	0
Walſingham, ab.	C. Auſt.	ab. T. Stephen.	391	11	6
Caſtle-acre, ab.	Clun.	1090.—	306	11	4
Weſt-acre, ab.	Clun.	T. W. Rufus	260	13	7

Northamptonſhire.

Burg. St. Peter, ab.	Ben.	by Roſerek of Mercia.	1721	14	6
Pipewell, ab.	Ciſt.	1143.—	286	11	8
St. Andrew's, pr.	Clun.	1067.—	263	7	1
Sulby, ab.	Præm.	T. Stephen.	238	8	5

Nottinghamſhire.

Lenton, pr.	Clun.	T. H. 1.	329	5	10
Thuragarton, pr.	C. Auſt.	T. H. 1.	259	9	4
Welbeck, ab.	C. Auſt.	T. Stephen.	249	6	8
Warſop, pr.	C. Auſt.	— —	239	10	5
Bella Valla, pr.	Carth.	ab. 16 Ed. 3.	227	8	0
Newſtead, pr.	C. Auſt.	T. Ed. 3.	219	18	8

The two laſt are under-valued in Dugdale, but thus by Speed.

Northum-

Northumberland.

Monaſteries.	*Order.*	*Founded.*	*Value.*		
			l.	*s.*	*d.*
Tinmouth, a cell to St. Alban's, a nunnery,			512	4	1

Oxfordshire.

Godſtow, ab.	Ben.	T. Stephen.	274	5	10
Eyneſham, ab.	Ben.	by Etheldred	441	12	2
Oſney, ab.	Ciſt.	T. H. 1.	654	10	2
Thame, ab.	Ciſt.	T. H. 1.	256	13	11
Oxford, pr.	— —	before Conq.	224	4	8
Dorcheſter, ab.	C. Auſt.	635.—	219	12	0

Shropshire.

Haghmond, ab.	C. Auſt.	1100.—	259	13	7
Lilleſhull, ab.	C. Auſt.	by Elfledak of Mercia.	229	3	1
Wigmore, ab.	C. Auſt.	1172.—	267	2	10
Wenlock, pr.	Clun.	1181 or before.	401	0	7
Salop, ab.	C. Auſt.	1081.—	615	4	3
Hales Owen, ab.	Præm.	T. John.	337	15	6

Somersetshire.

Glaſſenbury, ab.	Ben.	about 300.	3311	7	4
Brewton, ab.	C. Auſt.	ab. T. Conq.	439	6	8
Henton, pr.	Carth.	T. Hen. 3.	248	19	2
Witham, pr.	Carth.	by Hen. 2.	215	15	0
Taunton, pr.	C. Auſt.	T. Hen. 1.	286	8	10
Bath, pr.	Ben.	T. Hen. 3.	617	2	3
Keyneſham, ab.	C. Auſt.	T. Hen. 1.	419	14	3
Michelney, ab.	Ben.	740.—	447	4	11
Backland, pr.	Ciſt.	T. Edw. 1.	223	7	4

Staffordshire.

Dela Cres, ab.	Ciſt.	1153.—	227	5	0
Burton-upon-Trent,	Ben.	T. Eadred.	267	14	3
Croxden, ab.	Ciſt.	— —	—	—	

Suffolk.

Monasteries.	*Order.*	*Founded.*	*Value.*		
			l.	*s.*	*d.*
St. Edmundsbury, ab.	Ben.	1020.—	1659	13	11
Butley, ab.	C. Aust.	1171.—	318	17	2
Sibeton, ab.	Cist.	1150.—	250	15	7
Ixworth, ab.	C. Aust.	T. W. Conq.	280	9	5

Surrey.

Merton, pr.	C. Aust.	1414.—	957	19	5
Shene, pr.	Carth.	1414.—	777	12	0
Chertsey, ab.	Ben.	666.—	659	15	8
Newark, pr.	——	— —	258	11	11
St. Maryovers, ab.	C. Aust.	1106.—	625	6	6
Burmundsey, ab.	C. Aust.	1106.—	474	14	4

Sussex.

Lewis, ab.	Clun.	T. W. Rufus.	920	4	6
Robert's Bridge, ab.	Cist.	T. Hen. 2.	248	10	6
Bataille, ab.	Bl. M.	1066.—	987	0	11

Warwickshire.

Combe, ab.	Cist.	T. Stephen.	311	15	1
Kenelworth, ab.	C. Aust.	T. Hen. 1.	538	19	0
Meryval, ab.	Cist.	1148.—	254	1	8
Nuneaton, mon.	Ben.	T. Hen. 2.	253	14	5

Wiltshire.

Malmsbury, ab.	Ben.	ab. 670.—	803	17	7
Bradonstock, pr.	C. Aust.	T. W. Conq.	212	19	3
Edington, pr.	C. Aust.	1352.—	442	19	7
Ambresbury, ab.	Ben.	1177.—	494	15	2
Wilton, ab.	Ben.	T. Ethelwolf.	601	1	1
Fairly, a cell to Lewis,	Clun.	1125.—	217	0	4
Laycock, ab.	C. Aust.	1232.—	203	12	3

Worcestershire.

Malverne, ab.	Ben.	1083.—	308	1	9
Evesham, ab.	Ben.	T. Offa.	1183	12	3
Pershore, ab.	Cist.	— —	643	4	5
Hales Owen, ab.	Præm.	T. John.	282	13	4
Bordesly, ab.	Cist.	1138.—	388	1	1

York-

Yorkshire.

Monaſteries.	*Order.*	*Founded.*	*Value.*		
			l.	*s.*	*d.*
St. Mary, York, ab.	Ben.	1088.—	1550	7	0
Selby, ab.	Ben.	T. W. Conq.	720	12	10
Kirkſtal, ab.	Ciſt.	1147.—	329	2	11
De Rupe, ab.	Ciſt.	1147.—	224	2	5
Monks Burton, ab.	Clun.	ab. 1186.	259	3	6
Noſtel, ab.	C. Auſt.	T. Hen. 1.	492	18	2
Pomfrait, ab.	Clun.	T. W. Conq.	237	14	8
Giſbourn, ab.	C. Auſt.	T. Stephen.	628	3	4
Whitby, ab.	Ben.	T. W. Conq.	437	2	9
Montegratia, ab.	Carth.	ab. 1396.	323	2	10
Newburge, pr.	C. Auſt.	1145.—	367	8	3
Bellland, ab.	Ciſt.	1134.—	238	9	4
Kirkham, ab.	C. Auſt.	T. Hen. 1.	269	5	9
Melſa, ab.	Ciſt.	1136.—	499	6	4
Bridlington, ab.	C. Auſt.	T. Hen. 1.	547	6	11
Walton, ab.	Gilb	T. Stephen.	360	16	10
Bolton in Craven, pr.	C. Auſt.	T. Hen. 1.	212	3	4
Rival, ab.	Ciſt.	1132.—	278	10	2
Jerval, ab.	Ciſt.	T. Stephen.	234	18	5
Furnes, ab.	Ciſt.	1127.—	805	16	5
De Fontibus,	Ciſt.	1132.—	998	6	8
Warter, pr.	C. Auſt.	T. Hen. 1.	221	3	10
Richal.	— —	T. Stephen.	257	7	6
St. Michael near Hull,	Carth.	1377.—	231	17	3

In Wales.

Valle de Sancta Cruce in Denbighſhire,	Ciſt.	T. Edw. 1.	214	3	5
Strata Florida in Cardiganſhire,	Ciſt. or Clun.	T. W. Conq.	1926	6	0

Abbreviations uſed in the above Table.

Ab. *Abbey*; pr. *Priory*; C. Auſt. *Canons of St. Auſtin*; Bl. M. *Black Monks*, Wh. C. *White Canons*; Ben. *Benedictines*; Gilb. *Gilbertines*; Præm. *Præmonſtratenſes*; Carth. *Carthuſians*; Mon. *Monks*; Clun. *Cluniacks*; Ciſt. *Ciſtercians*; T. *in the time of*; ab. *about the year.*

APPENDIX.

APPENDIX.

ABSTRACT of the 43 *Geo.* 3. *c.* 84. entitled, "An "Act to amend the Laws relating to Spiritual Perſons "holding of Farms; and for enforcing the Reſidence of "Spiritual Perſons on their Benefices, in *England.*"

By this act, after reciting that many of the proviſions of the 21 *H.* 8. c. 13 intituled, *Spiritual perſons abridged from having pluralities of livings, and from taking of ferms, &c.* and other laws then in force relating to ſpiritual perſons reſiding on their benefices, had been found inconvenient; and it was expedient that certain of the proviſions of the ſaid act ſhould be repealed, and that other proviſions ſhould be made in lieu thereof; and that the ſaid act and laws aforſaid ſhould be amended, and more effectual proviſions made for enforcing the reſidence of ſpiritual perſons on their benefices, and protecting ſpiritual perſons from vexatious proſecutions, it is enacted as follows, viz. That, from and after the paſſing of this act, every ſpiritual perſon who ſhall before the paſſing of this act, have incurred any pecuniary penalty or forfeiture under the ſaid recited act, in reſpect of non-reſidence or farming of lands, and againſt whom no action ſhall have been brought under the ſaid act, ſhall be indemnified, freed, and diſcharged from the ſame, and all contracts, agreements, and leaſes, by words, or otherwiſe, before the paſſing of this act, by any ſpiritual perſon, either by himſelf or any other to or for his uſe, which if made after this act would, according to the proviſions thereof, be good and valid, ſhall be, and be deemed to be, as good and valid in the law, to all intents and purpoſes, as if the ſame had been made after the paſſing of this act.

21 Hen. 2. c. 13. recited.

Spiritual perſons againſt whom no action ſhall have been brought under recited act indemnified, and contracts which would be good after paſſing this act, valid, notwithſtanding that act.

By *ſect.* 2 & 3. Perſons ſued under recited act, may apply to the court, if ſitting, or to a judge, if not ſitting, to ſtay proceedings, upon certain conditions; and ſuch

court or judge may order any ſuit commenced on or ſubſequent to *July* 1, 1801, to be diſcontinued.

Spiritual perſons may take houſes, &c. though not in a city, &c. and ſuch as have not ſufficient glebe, may by conſent of the biſhop take farms.

From the paſſing of this act, it ſhall be lawful for any ſpiritual perſon to take to farm to himſelf, or to any perſon to his uſe, by leaſe, grant, words, or otherwiſe, for term of life, years, or at will, any meſſuage, manſion, or dwelling-houſe, with or without orchards, gardens, and other appurtenances, although not in any city, borough, or town; and it ſhall alſo be lawful for any ſpiritual perſon having or holding any donative, perpetual curacy, or parochial chapelry, not having any ſufficient or convenient glebe or demeſne lands annexed to, or in right of, or by reaſon of his benefice or cure or chapelry, or for any ſtipendiary curate, or any unbeneficed ſpiritual perſon, with the conſent or approbation of the biſhop of the dioceſe, ſignified in writing, to take to ferm to himſelf, or to any perſon to his uſe for a limited term of years, any farm, lands, tenements, or hereditaments, that may, under all the circumſtances, appear to ſuch biſhop proper to be taken, held, or occupied by any ſuch ſpiritual perſon, *for the convenience and accommodation of his houſehold and hoſpitality only*, without being liable to any pains, penalties, or forfeitures, under the ſaid firſt recited act, or any other act by reaſon thereof: Provided always, that nothing herein contained ſhall extend, or be conſtrued to extend, to authorize any non-reſidence of any ſuch ſpiritual perſon as aforeſaid. *ſ.* 4.

May hold eſtates as property, but not any farm for cultivation, unleſs under a leaſe granted on or before *January* 1, 1803, or by conſent of the biſhop.

From the paſſing of this act, it ſhall be lawful for any ſpiritual perſon, by himſelf, or any other to his uſe, to have, hold, uſe, or occupy in ferm, any manors, lands, tenements, or hereditaments, demiſed, leaſed or granted, to ſuch ſpiritual perſon, as the property or eſtate of ſuch ſpiritual perſon, or to take, purchaſe, receive, or hold, as the property and eſtate of ſuch ſpiritual perſon, any leaſe for life, term of years, abſolute or determinable on any life or lives, or to take any annual rent, or other annual advantage or profit, by occaſion of any leaſe or ferm of any manors, lands, tenements, or hereditaments, the property or eſtate of any ſuch ſpiritual perſon belonging to him, either in his own right, or in the right of any other perſon, or in right by reaſon of his having or holding any ſpiritual dignity or benefice, or ſo taken, purchaſed, received, or held as aforeſaid, as the property or eſtate of ſuch ſpiritual perſon, without being ſubject to any pains, penalties, or forfeitures

forfeitures whatever, under the ſaid firſt recited act, or any other act: Provided always, that nothing herein contained ſhall extend, or be conſtrued to extend, to authorize any ſpiritual perſon, having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, or ſerving a ſtipendiary curacy, to take, receive, or hold any ſuch manors, lands, tenements, or hereditaments, after the paſſing of this act, for the purpoſe of occupying, for the cultivation thereof, *or procuring profit therefrom*, by himſelf or any bailiff, or ſervant for his uſe, unleſs the ſame ſhall have been taken, received or holden under a leaſe granted to ſuch perſon on or before the 1ſt day of *January* 1803, or unleſs by the conſent or approbation of the biſhop as aforeſaid, ſignified in writing. *ſ.* 5.

May buy or ſell cattle or corn for the occupation of farms.

From the paſſing of this act, it ſhall be lawful for any ſpiritual perſon, by himſelf, or by any other for him or to his uſe, to bargain, and buy or ſell again for any lucre, gain, or profit, any manner of cattle or corn that may be neceſſary, proper, or convenient to be bought, ſold, kept, or maintained by ſuch ſpiritual perſon, or any other perſon for him or to his uſe, for the occupation, manuring, improving, paſturage, or profit of any farms, lands, tenements, or hereditaments, that may under and by virtue of any law now in force, or under any of the proviſions of this act, be lawfully held and occupied, poſſeſſed, or enjoyed, by ſuch ſpiritual perſon, or any other for him or to his uſe, without being ſubject to any pains, penalties, or forfeitures, by reaſon thereof, under the ſaid firſt recited act, or any other act: Provided always, that nothing in this act contained ſhall extend, or be conſtrued to extend, to authorize any ſuch ſpiritual perſon to buy or ſell any cattle as aforeſaid, or corn, in perſon, in any market, fair, or place of public ſale. *ſ.* 6.

Vicars or curates may take leaſes of the impropriate parſonages of their pariſhes;

From and after the paſſing of this act, it ſhall be lawful for any ſpiritual perſon having or holding any vicarage or perpetual curacy, of for the ſtipendiary curate thereof reſpectively, to occupy by himſelf or by any other to his uſe in ferm, of the leaſe or grant of any perſon or perſons, the impropriate parſonage, rectory, or vicarage reſpectively, of the pariſh of which ſuch ſpiritual perſon ſhall be the vicar, or perpetual curate, or ſtipendiary curate, or any part or parts thereof reſpectively, or to take any profit or rent out of any ſuch farm, without being ſubject

to any pains, penalties, or forfeitures, by means thereof, under the ſaid firſt recited act. *ſ.* 7.

but where not occupied by a ſpiritual perſon before paſſing this act, the licence of the biſhop neceſſary.

Provided nevertheleſs, That in ſuch caſes in which ſuch impropriate parſonage, rectory, or vicarage, or ſuch part thereof as ſhall be ſo occupied, ſhall not, at any time before the paſſing of this act, have been ſo occupied by the ſame, or any other ſuch ſpiritual perſon as aforeſaid, ſuch perſon ſhall remain liable to ſuch pains, penalties, and forfeitures, unleſs he ſhall have obtained the licence of the biſhop for ſo occupying the ſame. *ſ.* 8.

Clergyman licenſed or exempted from reſidence may occupy, where he reſides, ſuch lands as the biſhop may allow.

Any clergyman, poſſeſſed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, who ſhall be licenſed or otherwiſe exempted from reſidence under this or any other act, may take to ferm and occupy in the pariſh where he reſides, or any adjoining pariſh, ſuch lands for the convenience and accommodation of his houſehold and hoſpitality only, as the biſhop of the dioceſe in which he reſides may allow by any writing under his hand. *ſ.* 9.

13 Eliz c. 20. &c. repealed.

By the 10th ſection the 13th *Eliz. c.* 20. intituled, *An Act touching Leaſes of Benefices and other Eccleſiaſtical Livings with Cure*, together with all and every explanations, additions, and alterations thereof, made by ſeveral ſtatutes in the 14th, 18th, and 43d of her ſaid Majeſty's reign, and alſo ſo much of the 3d *Car.* 1. as makes the ſame perpetual, is repealed.

Act not to deprive ſpiritual perſons of any privilege they now enjoy.

Provided always, That nothing in this act ſhall extend or be conſtrued to extend, to deprive any ſpiritual perſon of any privilege, indemnity, or permiſſion, as to the taking, having, or holding any ferms or lands to which any ſuch ſpiritual perſon was or would be entitled unto, under any of the proviſions of the ſaid recited act of 21 *H.* 8. or any otherwiſe howſoever. *ſ.* 4.

Penalty for non-reſidence under recited act repealed, and other penalties impoſed.

From and after the paſſing of this act, ſo much of the ſaid firſt recited act as impoſes the penalty of ten pounds on any ſpiritual perſon therein deſcribed, who ſhall not keep reſidence on one of his dignities, prebends, or benefices, but abſent himſelf wilfully by the ſpace of *one month* together, or by the ſpace of *two months*, to be accounted at ſeveral times in any one year, ſhall be, and the ſame is hereby repealed; and from the paſſing of this act, every ſpiritual perſon, being poſſeſſed of any archdeaconry, deanry, or other dignity, prebend, benefice, donative, or perpetual

petual curacy, or parochial chapelry, who ſhall, without ſufficient cauſe, as in the ſaid firſt recited act, or the 25th *H.* 8. intitled, *An act that every judge of the high courts may have one chaplain beneficed with cure*, or under the 28th *H.* 8. intitled *The bill for non-reſidence of ſpiritual men and their benefices*, or under the 33d *H.* 8. intitled, *An act for the chancellor of the duchy of* Lancaſter *and others to have chaplains*, is ſpecified, or ſuch other ſufficient cauſe as would exempt ſuch ſpiritual perſon from any of the pains, penalties, and forfeitures under the ſaid recited acts, for any non-reſidence, and who ſhall not have any ſuch licence or exemption as is in this act mentioned for that purpoſe, wilfully abſent himſelf therefrom for the ſpace of *three months* together, or to be accounted at ſeveral times in *any one year*, and make his reſidence and abiding at any other place or places, except at ſome other dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, of which he may be poſſeſſed, ſhall, when ſuch abſence ſhall exceed ſuch period, and not exceed *ſix months*, forfeit and pay *one-third* of the annual value (deducting therefrom all outgoings, except any ſtipend paid to any curate), of the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, from which he ſhall ſo abſent himſelf as aforeſaid; and when ſuch abſence ſhall exceed *ſix months*, and not exceed *eight months*, *one-half* of ſuch annual value; and when ſuch abſence ſhall exceed *eight months*, *two-thirds* of ſuch annual value; and when ſuch abſence ſhall have been for the *whole of the year*, *three-fourths* of ſuch annual value; to be recovered by action of debt bill, plaint, or information, in any of his Majeſty's courts of record at *Weſtminſter*, or the courts of great ſeſſions in *Wales*, wherein no eſſoign, privilege, protection, or wager of law, or more than one imparlance ſhall be allowed; and the whole of every ſuch penalty or forfeiture ſhall go and be paid to the perſon who ſhall ſue for the ſame, together with ſuch coſts of ſuit as ſhall be allowed, according to the practice of the court in which ſuch action ſhall be brought; provided, that no parſonage that hath a vicar endowed, or perpetual curate, and having no cure of ſouls, ſhall be taken to be or be comprehended under the name of *benefice*, within the true intent and meaning, or for the purpoſes of this act. *ſ.* 12.

No parſonage that hath a vicar endowed, &c. ſhall be deemed a benefice.

The court in which any action shall be depending, may require the diocesan to certify the reputed annual value of benefices, &c.

The court in which any such action, bill, plaint, or information, shall be depending, may, upon application made for that purpose, require by rule or order of the said court, or any judge thereof, the archbishop or bishop of the diocese, within the limits of which the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, shall be locally situate, or to whom the same shall be subject, according to the provisions of this act, for or by reason of non-residence, in, at, or upon which the penalties and forfeitures shall be sought to be recovered by such action, bill, plaint, or information, to certify *in writing* under his hand to the said court; and also to the party for that purpose named in the said rule or order, the reputed annual value of such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry; and upon such rule or order being left with such archbishop or bishop, or the register of such archbishop or bishop, such archbishop or bishop shall accordingly so certify such reputed annual value, and such certificate shall in all subsequent proceedings upon such action, bill, plaint, or information, be received and taken as evidence of the annual value of such dignity, prebend, benefice, &c. for the purposes of this act, without prejudice, nevertheless to the admissibility or effect of any such other evidence as may be offered or given respecting the actual value thereof. *s.* 13.

No person who has resided a year without absence for more than three months, shall be liable for any previous non-residence, unless the action be commenced before he has so resided.

Provided also, that no spiritual person being possessed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, who shall have made his residence and abided at his said dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, for the space of *one whole year*, without wilful absence therefrom, for any longer time than *three months together*, or in the whole at several times, shall be liable to any of the pains, penalties, or forfeitures in this act, or the said recited act contained, for any previous non-residence, unless the action for the recovery of such penalties or forfeitures shall have been actually commenced against such person, previous to his having completed such residence for *one year*, in the manner herein specified. *s.* 14.

Certain persons exempted from penalties for non-residence.

No spiritual person having or holding any office, in such manner as the same under any of the provisions of the said first recited act, or the 25th of *H.* 8. intituled, *An act that*

every

every judge of the high courts may have one chaplain benefi-ced with cure; or of the 28th *H.* 8. intituled, *The bill for non-reſidence of ſpiritual men and their benefices*; or of the 33d *H.* 8. intituled, *An act for the Chancellor of the Duchy of* Lancaſter *and others, to have chaplains*; would exempt ſuch ſpiritual perſons from reſidence, or from the penalties and forfeitures in the ſaid acts contained for non-reſidence, or actually ſerving as a chaplain of the Houſe of Commons, or as Clerk of his Majeſty's cloſet, or as a deputy clerk thereof, during the time of their reſpective attendance, or as a chaplain general of his Majeſty's forces, or brigade chaplain on foreign ſervice, or chaplain on board any of his Majeſty's ſhips, or of his Majeſty's dock-yards, or in any of his Majeſty's garriſons, or chaplain of his Majeſty's corps of artillery, during the times of attending the duties of ſuch offices reſpectively, or as chaplain to any *Britiſh* factory, or in the houſehold of any *Britiſh* ambaſſador or publick miniſter reſiding abroad, during the time of his actually reſiding in ſuch factory or houſehold, and performing there at all due times and ſeaſons the duties of ſuch his office, or as chancellor or vicar general, or in his abſence the principal ſurrogate or official in any eccleſiaſtical court of any dioceſe, whilſt they are reſiding in the places where their reſpective offices are exerciſed, or as minor canon, or vicar choral, or prieſt vicar, or any ſuch other public officer in any cathedral or collegiate church, during the times for which they may be required by the canons or local ſtatutes thereof to reſide at ſuch cathedral or collegiate church, and actually reſide and perform duty at the ſame, or as deans, ſub-deans, prieſts, or readers, in his Majeſty's royal chapels at *St. James's* and *Whitehall*, or as reader in his Majeſty's private chapel at Windſor or elſewhere, or as chaplain at the royal military aſylum at *Chelſea*, or royal military college at *High Wycombe*, or teacher at the royal military academy at *Woolwich*, or chaplains at the royal hoſpitals at *Greenwich* and *Chelſea*, or as chaplains to the royal hoſpitals for ſeamen at *Haſlar* and *Plymouth*, whilſt they ſhall reſpectively reſide and perform the duties of their reſpective offices, or as a preacher or reader in any of the inns of court at the rolls, or as burſar, dean, vice-preſident or publick tutor or chaplain, or other ſuch publick officer, in any college or hall in either of the univerſities

of *Oxford* or *Cambridge*, during the period for which he may reſpectively be required, by reaſon of any ſuch office, to perform the duties of any ſuch office, and actually ſhall perform the duties of the ſame, or as publick librarian or publick regiſtrar, or proctor, or publick orator, or other ſuch publick officer, in either of the ſaid univerſities, during the period for which he may reſpectively be required, by reaſon thereof, to perform the duties of any ſuch office, and actually ſhall perform the duties of the ſame, or as fellow of any college in either of the univerſities, or of *Eton* or *Wincheſter College*, during the time for which he may be required to reſide by any charter or ſtatute, and actually reſides therein, or as warden or provoſt of *Eton* or *Wincheſter College*, during the time for which they may be reſpectively required to reſide, or ſhall actually reſide therein, or as ſchoolmaſter or uſher in the ſame, or as ſchoolmaſter or uſher of *Weſtminſter* ſchool, ſhall be liable to any of the pains, penalties, or forfeitures in the ſaid firſt recited act or this act contained, for or on account of any non-reſidence on any dignity, prebend, benefice, donative, or perpetual curacy. *ſ.* 15.

Perſons entitled under 28 *Hen.* 8. *c.* 13. to privilege of non-reſidence till 40 years old, not to be entitled to it after 30.

From the paſſing of this act, no perſon mentioned in 28th *H.* 8. *c.* 13. intituled, *The bill for non-reſidence of ſpiritual men, and their benefices*, and entitled under the proviſions of the ſaid act, or any other act, to the privilege and liberty of non-reſidence until after and above *the age of forty years*, ſhall be entitled to enjoy the privilege and liberty of non-reſidence after or above the age of *thirty years*, without prejudice nevertheleſs to any of the exceptions and ſavings contained in the ſaid act. *ſ.* 16.

No penalty to be levied againſt the perſon, where it can be recovered by ſequeſtration of the benefice in three years.

No penalty or coſts incurred by any ſpiritual perſon by reaſon of any non-reſidence on his dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, ſhall be levied by execution againſt the body of ſuch perſon, whilſt he ſhall hold the ſame or any other dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, out of the profits of which the ſame can be levied by ſequeſtration, within the term of *three years*; and in caſe the body of any ſuch ſpiritual perſon ſhall be taken in execution for the ſame, the court in which the ſame was recovered, or any judge thereof, ſhall, upon application made for that purpoſe, diſcharge the party from ſuch execution, in caſe it ſhall be made to appear to the

the satisfaction of such court or judge that such penalty and costs can be levied as aforesaid. *s.* 17.

From the passing of this act, it shall be lawful for the several bishops respectively, upon application made for that purpose by petition in writing, by any spiritual person having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, locally situated within their respective dioceses, upon such proofs as to any facts stated in any such petition as any such bishop may think necessary, if he shall require it, by affidavit made before any surrogate or master extraordinary in chancery, to grant in such cases as are herein-after enumerated, where, on due consideration of all the circumstances stated in any such application, and verified to the satisfaction of the bishop as aforesaid, such bishop shall in his discretion think it fit to grant the same, a licence in writing under his hand, expressing the cause of granting the same, for the non-residence of such spiritual person on his dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, for the purpose of exempting such person from any pecuniary penalties or forfeitures; under and subject nevertheless to the regulations, provisions, and restrictions in this act contained. *s.* 18. Bishops may grant licences for non-residence in certain cases.

It shall be lawful for any bishop to grant licences to any spiritual persons having any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, within his diocese, to reside out of the proper house of residence, or out of the parish, and within such distance therefrom, as the case may appear to such bishop to require, if, upon the consideration of all the circumstances of any such case, such bishop shall in his discretion think the same fit and proper, in the several cases herein after mentioned; (that is to say), To any spiritual person who shall be prevented from residing in the proper house of residence, or in the parish, by *actual illness* or infirmity of body of himself, or wife or child, making part of, and residing with him as part of his family; and also to any spiritual person having or holding any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, whereupon or wherein there shall be *no house of residence*, or where the house of residence shall be *unfit for the residence* of such ecclesiastical person, such unfitness not being occasioned by any negligence, default, or other misconduct of such ecclesi- Cases in which bishops may grant licences for non-residence.

eccleſiaſtical perſon, ſuch ſpiritual perſon keeping ſuch houſe of reſidence in ſuch repair as ſhall be to the ſatisfaction of the biſhop; and alſo to any ſpiritual perſon having or holding any benefice, donative, perpetual curacy, or parochial chapelry, and having or poſſeſſing or occupying in the pariſh of the ſame reſpectively, any manſion or meſſuage belonging to himſelf or any relative, to reſide in ſuch manſion or meſſuage, ſuch ſpiritual perſon keeping the houſe of reſidence, and other buildings belonging thereto, in good and ſufficient repair and condition, to the ſatisfaction of the biſhop; and alſo to any ſpiritual perſon having or holding any benefice, donative, perpetual curacy, or parochial chapelry, of ſmall value, and ſerving as a ſtipendiary curate elſewhere, with the licence of the biſhop of the dioceſe, and providing for the ſerving of ſuch his benefice, donative, perpetual curacy, or parochial chapelry, to the ſatisfaction of the biſhop of his dioceſe; and alſo to any maſter or uſher of any endowed ſchool duly licenſed by the biſhop, and actually employed in teaching therein, or to the maſter of any other ſchool duly licenſed by the biſhop; and alſo to any maſter or preacher of hoſpitals or incorporated charitable foundations during the period for which he may be required to reſide by any charter or ſtatute of any ſuch hoſpital or incorporated charitable foundation, or by any other lawful authority, in the ſame, and ſhall actually reſide and perform his duties therein; or to any perſon holding any endowed lecture-ſhip, or endowed chapelry, or endowed preacherſhip, and performing and executing the duties thereof reſpectively; or to any ſpiritual perſon having or holding any benefice, donative, perpetual curacy, or parochial chapelry of ſmall value, and ſerving as preacher in any proprietary chapel in cities or towns, with the licence of the biſhop in whoſe dioceſe he ſhall ſo officiate; or to the librarians of the Britiſh Muſeum, or of Sion College; or to the truſtees of Lord *Crewe's* Charity, during the times of their perſonal attendance on the duties of their office: Provided always, that for any ſuch licence, the party obtaining the ſame ſhall not pay more to the ſecretary or officer of the biſhop than the ſum of *ten ſhillings*, excluſive of any ſuch ſtamps as may be required by law: Provided always, that if any ſpiritual perſon applying to any biſhop for any ſuch licence, ſhall think

Fee for licences.

Perſons aggrieved by refuſal of licences, may appeal to the archbiſhop.

think himſelf aggrieved by the refuſal thereof, it ſhall be lawful for ſuch ſpiritual perſon to appeal to the archbiſhop of the province, who ſhall forthwith, either by himſelf, or ſome commiſſioner appointed from among the other biſhops of his province, under his hand, make, or cauſe to be made, enquiry into the ſame, and by writing, ſigned by himſelf, confirm ſuch refuſal, or grant a licence under this act, as ſhall ſeem juſt and proper: Provided nevertheleſs, that the party appealing ſhall give ſecurity to the biſhop for the payment of ſuch reaſonable expences occaſioned by the appeal, as the archbiſhop, or his commiſſioner, ſhall award. *ſ.* 19.

Security to be given for payment of expences.

From the paſſing of this act, it ſhall be lawful for any ſuch biſhop as aforeſaid, in any caſes not herein-before enumerated, in which under all the circumſtances of any ſuch caſe, ſuch biſhop ſhall think it expedient to grant to any ſuch ſpiritual perſon poſſeſſed of any dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, a licence to reſide out of the proper houſe of reſidence, or out of the pariſh, as the caſe may be, or as the caſe may appear to ſuch biſhop to require, and to aſſign, in any caſe in which the ſtipendiary curate may be employed to do the duty of ſuch ſpiritual perſon, ſuch ſalary as he ſhall judge fit to appoint, due reſpect being had to the value of the benefice, donative, perpetual curacy, or parochial chapelry, and to all the other circumſtances of the caſe: Provided always, that in every ſuch caſe the nature and ſpecial circumſtances thereof, and the reaſons that have induced ſuch biſhop to grant ſuch licence as aforeſaid, ſhall be forthwith tranſmitted to the archbiſhop of the province to which ſuch biſhop ſhall belong, who ſhall forthwith, by himſelf, or by ſome commiſſioner appointed for that purpoſe from among the biſhops of ſuch province, by writing under his hand, examine into ſuch caſe, and make ſuch enquiries as to any particulars relating thereto, as ſuch archbiſhop or commiſſioner may think neceſſary, and after ſuch enquiries, after a return of the ſubſtance thereof, in writing, to ſuch archbiſhop, ſuch archbiſhop ſhall thereupon allow or diſallow ſuch licence, in the whole or in part, or make any alteration therein as to the period for which the ſame may have been granted, or otherwiſe, and likewiſe as to the ſtipend aſſigned to the curate, as to ſuch archbiſhop ſhall ſeem fit;

In caſes not enumerated, biſhops may grant licences, and aſſign ſalaries to curates employed.

Reaſons for granting them to be tranſmitted to the archbiſhop for examination and allowance.

fit; and no ſuch licence ſhall be good, valid, or effectual under this act for any purpoſe whatever, unleſs it ſhall have been ſo allowed and approved by ſuch archbiſhop; ſuch allowance thereof being ſignified by the ſigning thereof by ſuch archbiſhop: Provided always, that it ſhall not be neceſſary in ſuch licence to ſpecify the cauſe of granting the ſame: Provided alſo, that no licence granted under this act ſhall be made void by the death or removal of the biſhop or archbiſhop granting the ſame, but the ſame ſhall be and remain good and valid notwithſtanding any ſuch death or removal, unleſs the ſame ſhall be revoked by the next or any ſucceeding biſhop or archbiſhop, as the caſe may require: Provided alſo, that any ſpiritual perſon may appeal againſt any ſuch revocation by the biſhop alone, in like manner as is herein-before directed in caſe of any refuſal of any licence: Provided alſo, that the reſpective archbiſhops may, in their reſpective dioceſes of which they are biſhops, grant licences under the proviſions and regulations in this act contained, in all caſes in which any licences may be granted by any biſhop under this act, either by his own authority, or with the allowance and approval of the archbiſhop as aforeſaid: Provided alſo, that it ſhall be lawful for any ſuch archbiſhop to order and direct ſuch reaſonable fees and charges to be paid by any ſuch ſpiritual perſon appealing as aforeſaid, in reſpect of any ſuch proceedings as aforeſaid, as he ſhall in his diſcretion think fit: Provided always, that in every caſe when any coſts and charges directed by ſuch archbiſhop or biſhop as aforeſaid, ſhall remain unpaid for the period of *twenty-one* days after demand thereof left at the uſual or laſt place of abode of the perſon liable to the payment, it ſhall be lawful for ſuch biſhop or archbiſhop reſpectively to cauſe the ſame to be recovered by ſequeſtration of the profits of the dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, of ſuch ſpiritual perſon as aforeſaid, and which ſequeſtration ſuch archbiſhop or biſhop are reſpectively hereby empowered to iſſue. ſ. 20.

Licences not to be void by the death or removal of the grantor, unleſs revoked by the ſucceſſor.

Archbiſhops, in their reſpective dioceſes, may grant licences.

Fees may be ordered to be paid by appellants.

Coſts may be recovered by ſequeſtration.

Licences may be revoked.

Provided always, That it ſhall be lawful for any biſhop or archbiſhop who ſhall have granted any licence for non-reſidence as aforeſaid, or any ſucceſſor or ſucceſſors of any ſuch biſhop or archbiſhop, to revoke any ſuch licence, in any caſe in which it may appear to him or them

them proper and expedient to revoke the ſame: Provided alſo, that no licence for non-reſidence granted under this act ſhall continue in force for more than *two years* from the granting thereof. *ſ.* 21.

None to be in force more than two years.

Every ſuch biſhop or archbiſhop who ſhall grant or revoke any licence under this act, ſhall cauſe a copy of ſuch licence or revocation to be filed in the regiſtry of the dioceſe within which ſuch dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, in reſpect whereof any ſuch licence ſhall be granted or revocation made, ſhall be locally ſituate; and an alphabetical liſt of ſuch licences and revocations ſhall be made out by the regiſter of the ſaid dioceſe, and entered in a book, and kept for the inſpection of all perſons, upon payment of *two ſhillings*, and no more; and a copy of every ſuch licence and revocation ſhall be tranſmitted to the churchwardens of the pariſh to which the ſame relates, *within one month* after the grant of ſuch licence or revocation thereof, to be by them depoſited in the pariſh cheſt; and a copy of the ſame ſhall likewiſe be publickly read at the viſitation of the archdeacon of the archdeaconry within which the benefice, donative, perpetual curacy, or parochial chapelry, in reſpect whereof the licence ſhall have been granted or revocation made, ſhall be locally ſituate, immediately next ſucceeding the granting or revocation thereof. *ſ.* 22.

Copies of licences or revocations to be filed in the regiſtry of the dioceſe, and a liſt kept for inſpection; and copies of certain licences and revocations to be tranſmitted to churchwardens, and publickly read at the firſt viſitation.

Provided alſo, That every archbiſhop who ſhall confirm in manner directed by this act any licence in any caſe not enumerated in this act, or who ſhall grant any licence in his own dioceſes, ſhall annually on or before the 31ſt of *January* in each year, tranſmit to his Majeſty in council a liſt of all ſuch licences ſo confirmed or granted reſpectively as aforeſaid, in the year ending on the laſt day of *December* preceding; and ſhall, in every ſuch liſt, ſpecify the reaſons tranſmitted to him by the biſhops of the ſeveral dioceſes, for granting the ſaid licences, and the reaſons which have induced him to confirm the ſame, and alſo the reaſons which have induced him to grant any ſuch licence as aforeſaid within his own dioceſe; and it ſhall be lawful for his Majeſty in council, by any order made for that purpoſe, to revoke and annul any ſuch licence, and if his Majeſty in council ſhall think fit ſo to do, the ſame ſhall be tranſmitted to the archbiſhop who ſhall

A liſt of licences confirmed by the archbiſhop, or granted in his own dioceſe, ſhall be annually tranſmitted to his Majeſty in council, who may revoke licences, *&c.*

ſhall have confirmed or granted ſuch licence, who ſhall thereupon cauſe a copy of every ſuch order made in relation to any licence confirmed by him as aforementioned, to be tranſmitted to the biſhop of the dioceſe in which ſuch licence ſhall have been granted, who ſhall thereupon cauſe a copy of the mandatory part of the ſaid order to be filed in the regiſtry of ſuch dioceſe, and a like copy to be delivered to the churchwardens of the pariſh to which the ſame relates, in manner herein-before directed as to licences under this act; and every ſuch archbiſhop ſhall cauſe a copy of the mandatory part of every ſuch order made in relation to any ſuch licence as aforeſaid granted by him in his own dioceſe, to be in like manner filed in the regiſtry of his dioceſe, and a like copy alſo to be delivered to the churchwarden of the pariſh to which ſuch licence ſhall relate, in manner before mentioned. *ſ.* 23.

Between the grant and revocation of a licence, it ſhall be deemed valid.

Provided always, That after ſuch licence ſhall have been ſo revoked by his Majeſty in council, the ſame ſhall nevertheleſs, in all queſtions that ſhall have ariſen or may thereafter ariſe, touching the non-reſidence of the ſpiritual perſon to whom the ſame ſhall have been granted, between the period at which the ſame were granted or confirmed, and the time at which the ſame ſhall be ſo revoked as aforeſaid, be deemed and taken to be, and to have been valid and effectual to the intents and purpoſes of this act. *ſ.* 24.

On or before March 25, 1805, and ſo annually, a return ſhall be made to his Majeſty in council of every benefice &c and of the perſons who ſhall not have reſided thereon; and every non-reſident after Jan. 1, 1804, by exemption, without licence, ſhall yearly notify the nature of it to the dioceſan within a certain period.

On the 25th of March, 1805, and at the like period in every ſucceeding year, a return or returns ſhall be made, to his Majeſty in council, by every ſuch archbiſhop and biſhop, of the names of every dignity, prebend, benefice, donative, perpetual curacy, and parochial chapelry, within their reſpective dioceſes, or ſubject to their reſpective juriſdictions, by virtue of this act: and the names of the ſeveral perſons poſſeſſing the ſame, who ſhall not have reſided thereon by reaſon of any exemption under or by virtue of this act or any other act, or by reaſon of any licence granted by ſuch archbiſhop or biſhop reſpectively, for any and what cauſe enumerated by this act; and alſo of all perſons poſſeſſing the ſame, not having any ſuch exemption or licence, who ſhall not have reſided on ſuch dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, ſo far as the biſhop is informed thereof; and for the purpoſe of enabling

enabling the archbishops and bishops to make such return as aforesaid, every person who shall be non-resident in any year subsequent to the 1st of January in the year 1804, by reason of any exemption under this or any other act, and to entitle him to which it is not necessary to obtain any licence under this act, shall *within six weeks* from and after the 1st of January, in every following year, notify the same in writing, under his hand, to the archbishop or bishop of the diocese to whose jurisdiction he is subject by this act or otherwise, in respect of such dignity, prebend, benefice, donative, perpetual curacy, or parochial chapelry, specifying the nature of such exemption: Provided always, that it shall be lawful for the person making such notification, to deliver, or cause to be delivered to the registrar of such diocese as aforesaid, a duplicate of such notification in writing, and which duplicate such registrar is hereby required to file and preserve in the registry of such diocese; and in all cases in which any question shall arise, whether any such person as aforesaid has made such notification as is required by this act as aforesaid, a copy of such duplicate, certified under the hand of the registrar of the diocese for the time being, together with the time of filing the same, and which certificate such registrar is hereby required to give, upon application for that purpose made by or on the behalf of the party interested, shall be deemed and taken to be evidence that the party required to make such notification as aforesaid hath made the same. *s.* 25.

A duplicate of such notification may be delivered to the registrar to be filed, and his certificate shall be evidence of its being made.

And, to the intent to enforce such persons as aforesaid from time to time duly to make such notification as aforesaid, if any person shall wilfully neglect to make such notification as aforesaid, the person so neglecting shall not be or be deemed to be entitled, from and after the expiration of such *six weeks*, to the benefit of such exemption as aforesaid, until he shall have made such notification in writing; and such person so wilfully neglecting to make such notification as aforesaid, notwithstanding such subsequent notification, shall not be or be deemed to be entitled to such exemption in respect of any non-residence which shall have taken place between the expiration of such six weeks, and the time of making such subsequent notification; and in all cases in which any question shall arise, whether such neglect was wilful, the same shall be taken to have been wilful, unless the contrary is proved by the person claiming such exemption. *s.* 26.

Persons neglecting to make notification, shall not be entitled to exemption.

Any

Licence may be pleaded in bar of action, and in case of nonsuit, &c the defendant shall have costs.

Any spiritual person to whom any such licence for non-residence shall have been granted, and against whom any action shall thereafter be brought for any penalty or forfeiture under this or any other act, by reason of any non-residence, or any matter or thing relating whereto any licence under this act has been granted, to plead such licence in bar of any such action; and if the plaintiff in such suit or action shall be nonsuit, or shall discontinue any such suit or action after any plea of licence shall have been pleaded thereto under this act, then and in such case the defendant in such suit or action shall have full costs of suit; and if in any such suit or action a verdict shall be given for the defendant, the defendant shall have treble costs, and have the like remedy for the same as any defendant hath in other cases to recover costs by law. *s.* 27.

By whom licences may be granted, while a see is vacant, or the prelate absent.

Provided always, That during the vacancy of any see, the power of granting licences under this act, subject to the regulations therein contained, shall be exercised by the vicar general of the diocese, and that during the absence of any prelate out of the realm, or such infirmity as disables him from exercising in person the functions of his office, it shall be exercised by such person or persons as is or are lawfully empowered to exercise his general jurisdiction in the diocese. *s.* 28.

Act not to exempt from censure for non-residence without licence; but to censure for non-residence not exceeding three months in one year, shall be put in force, nor any proceedings be admitted, except at the suit of the bishop or archdeacon.

Nothing in this act contained shall extend, or be construed to extend to exempt any person from any canonical or ecclesiastical censures, or affect any proceedings that shall hereafter be instituted in any ecclesiastical court, in order to cause the same to be inflicted in relation to the non-residence of any spiritual person, having or holding any benefice, donative, perpetual curacy, or parochial chapelry, not being duly licensed according to the provisions of this act to be absent therefrom, nor having any other lawful cause of absence: Provided always, that, from and after the passing of this act, no such censures by reason of any non-residence, not exceeding *three months* in any one year shall be put in force, nor shall any proceedings be admitted in any ecclesiastical court against any such spiritual person for such non-residence not exceeding *three months* in any one year, at the suit or instance of any person or persons other than the archbishop, bishop, or archdeacon only of the diocese and archdeaconry within such benefice, donative, perpetual curacy, or parochial chapelry,

chapelry, in respect whereof such non-residence shall have taken place, shall be locally situated. C. 29.

In every case in which it shall appear to any such bishop or archbishop as aforesaid, that any spiritual person having or holding any benefice, donative, perpetual curacy, or parochial chapelry, and not being licensed according to this act to be absent therefrom, nor having any other lawful cause of absence from the same, does not sufficiently reside on the same respectively, it shall be lawful for such bishop or archbishop to issue, or cause to be issued, a monition, to such spiritual person, forthwith to proceed to and reside thereon, and perform the duties thereof, and to make a return to such monition within a certain number of days after the issuing thereof; so as that in every such case there shall be *thirty days* between the time of delivering such monition to such spiritual person, or leaving the same at his then usual or last place of abode, or if not there to be found, with the officiating minister, or one of the churchwardens, and also at the house of residence (if any such there be) belonging to such benefice, donative, perpetual curacy, or parochial chapelry, to which any such spiritual person shall be required by such monition to proceed and reside thereon, and the time specified in such monition for the return thereto; and every such monition shall immediately on the issuing thereof be filed in the registry, and open for inspection on the payment of two shillings, and no more; and the spiritual person to whom any such monition shall be sent under this act, shall, within the time specified for that purpose, make a return thereto; and it shall be lawful for the bishop or archbishop to whom any such return shall be made to require such return, or any facts contained therein, to be verified by the oath of such spiritual person, or others, to be taken before some surrogate or master extraordinary in chancery; and in every case where no such return shall be made, or where such return shall not state such reasons as shall be deemed satisfactory by such bishop or archbishop for the non-residence of the spiritual person to whom such monition shall have been sent as aforesaid, or where the same or any of the facts contained therein shall not be so verified upon oath as aforesaid, when the same shall have been required, then and in such case it shall be lawful for such bishop or archbishop to issue *an order in writing*, under his hand and

In case residence does not follow, the bishop may issue a monition to reside, &c.

Returns to be made to monitions, which may be required to be upon oaths

Where returns shall not be made, or not be satisfactory, the bishop may order residence, and if disobeyed, may sequester the profits of the benefice, and direct an application thereof.

 seal,

ſeal, to require ſuch perſon to proceed to and reſide as aforeſaid, *within thirty days* after ſuch order in writing, or a copy thereof, ſhall have been delivered or left in like manner as is herein-before required as to monitions; and in caſe of non compliance, it ſhall be lawful for ſuch biſhop or archbiſhop to ſequeſter the profits of ſuch benefice, donative, perpetual curacy, or parochial chapelry of ſuch ſpiritual perſon as aforeſaid, until ſuch order ſhall be complied with, or ſuch ſufficient reaſons for non-reſidence ſtated and proved as aforeſaid; and to direct, by any order to be made for that purpoſe under his hand, the application of ſuch profits, after deducting the neceſſary expences of ſerving the cure, either in the whole or in ſuch proportion as he ſhall think fit, in the firſt place, to the payment of ſuch reaſonable expences as ſhall have been incurred in relation to ſuch monition and ſequeſtration, and in the next place towards the augmentation or improvement of any ſuch parſonage, vicarage, donative, or perpetual curacy, or the houſe of reſidence thereof, or any of the buildings and appurtenances thereof, or towards the improvement of any of the glebe or demeſne lands thereof; or may order and direct the ſame, or any portion thereof, to be paid to the governors of the bounty of Queen *Anne* for the augmentation of the maintenance of the poor clergy, to be applied for the purpoſe of ſuch augmentation as ſuch biſhop or archbiſhop ſhall in his diſcretion, under all the circumſtances, think fit and expedient; and it ſhall alſo be lawful for any ſuch biſhop or archbiſhop, *within ſix months* after ſuch order for ſequeſtration, or *within ſix months* after any money ſhall have been actually levied by ſuch ſequeſtration, to remit to any ſuch ſpiritual perſon any part or proportion of ſuch ſequeſtered profits, or cauſe the ſame or any part thereof that ſhall have been paid or directed to be paid to ſuch governors of Queen *Anne's* bounty to be repaid to ſuch ſpiritual perſon, which repayment the ſaid governors are hereby authorized and required, upon an order under the hand of any ſuch biſhop or archbiſhop, to make out of any money then in their hands, or if no money ſhall then be in their hands, out of the next money that ſhall come to their hands, in any caſe in which by reaſon of the ſubſequent obedience of any ſuch ſpiritual perſon to any ſuch monition or order, or the ſtating and proving ſuch ſufficient reaſons as aforeſaid, ſuch biſhop or

arch-

archbiſhop ſhall think the ſame proper: Provided always, that when any ſuch ſpiritual perſon ſhall think himſelf aggrieved by reaſon of any ſuch ſequeſtration iſſued by any biſhop, it ſhall be lawful for any ſuch ſpiritual perſon *within fifteen days* after the making any order for any ſuch ſequeſtration as aforeſaid, and upon ſuch notice thereof, to be ſerved in like manner as the monition herein-before directed, to appeal to the archbiſhop of the province to which ſuch biſhop ſhall belong, who ſhall forthwith, either by himſelf or ſome commiſſioner appointed from among the biſhops of his province for that purpoſe under his hand and ſeal, make or cauſe to be made due enquiry into the ſame, and make ſuch order therein or relating thereto, or to the profits that ſhall be ſo ſequeſtered as aforeſaid, for the return to ſuch ſpiritual perſon of the ſame or any part thereof, or otherwiſe, as ſhall, under all the circumſtances of the caſe, appear to be juſt and proper: Provided always, that the party ſo appealing ſhall give ſecurity to the biſhop for the payment of ſuch reaſonable expences occaſioned by the appeal as the archbiſhop or his commiſſioner or commiſſioners ſhall award: Provided alſo, that no ſuch order for any ſequeſtration ſhall be put in force during ſuch appeal as aforeſaid, and until the ſame ſhall be determined. *ſ.* 30.

Appeal againſt ſequeſtrations may be made to the archbiſhop.

Appellant to give ſecurity for payment of expences.

Provided alſo, That every ſpiritual perſon to whom any ſuch monition or order in writing ſhall be ſent as aforeſaid under this act, who ſhall be at the time of the iſſuing thereof abſent from reſidence, in or upon his benefice, donative, perpetual curacy, or parochial chapelry, contrary to the proviſions of this act, but who ſhall, in obedience to ſuch monition or order, forthwith return to due reſidence, and the profits of whoſe benefice, donative, perpetual curacy, or parochial chapelry, ſhall, by reaſon of ſuch return, not be ſequeſtered, ſhall nevertheleſs pay all coſts, charges, and expences incurred by reaſon of the iſſuing and ſerving ſuch monition or order; to be levied as any coſts may be levied on any ſpiritual perſon by any archbiſhop or biſhop, under any of the proviſions of this act. *ſ.* 31.

Perſons who ſhall return to reſidence on monition, ſhall pay the coſts.

And, to the intent effectually to enforce *bona fide* reſidence, according to the intent and meaning of ſuch monitions and orders as aforeſaid; if any ſpiritual perſon not licenſed under this act to be abſent from his benefice, donative, perpetual curacy, or parochial chapelry, not having

If any perſon returning to reſidence on monition, ſhall before ſix months thereafter abſent

himſelf, the biſhop may without monition, ſequeſter the profits of the benefice.

ing other lawful cauſe of abſence from the ſame, who, after any ſuch monition or order as aforeſaid, requiring his reſidence, and before or after any ſuch ſequeſtration as aforeſaid, ſhall, in obedience to ſuch monition or order have begun to reſide upon his benefice, donative, perpetual curacy, or parochial chapelry, ſhall afterwards and before the expiration of *ſix months* next after the commencement of ſuch reſidence, in the judgment and without the leave of ſuch archbiſhop or biſhop, begin wilfully to abſent himſelf from ſuch benefice, donative, perpetual curacy, or parochial chapelry, it ſhall be lawful for ſuch archbiſhop or biſhop, without iſſuing any other monition, or making any other order, again to ſequeſter and apply the profits of ſuch benefice, donative, perpetual curacy, or parochial chapelry, as is before directed by this act, for the purpoſe of enforcing the reſidence of ſuch ſpiritual perſon, according to the true intent of the original monition iſſued by ſuch archbiſhop or biſhop as aforeſaid; and it ſhall be lawful for the archbiſhop or biſhop ſo to proceed in like caſes from time to time as often as occaſion may require; provided, that in each and every of ſuch caſes, ſuch ſpiritual perſon ſhall be entitled to appeal againſt ſuch ſequeſtration, in ſuch manner and upon ſuch terms as herein-before is and are mentioned, touching appeals reſpecting ſequeſtrations; but nevertheleſs the ſame ſhall be in force during ſuch appeal. *ſ.* 32.

If a clerk ſhall continue under ſequeſtration three years, or incur three ſequeſtrations within that period, the benefice ſhall become void.

If any clerk ſhall continue under any ſequeſtration made under the proviſions of this act, for non-reſidence for the ſpace of *three years*, or ſhall, under the proviſions of this act, incur *three ſequeſtrations* in the ſaid ſpace of *three years*, not being relieved, with reſpect to any of ſuch ſequeſtrations, upon appeal, the benefice, donative, perpetual curacy, or parochial chapelry, in relation to non-reſidence upon which ſuch ſequeſtrations ſhall have been made, ſhall become *ipſo facto* void, and the patron or perſon entitled to preſent or nominate ſome clerk thereto, other than the clerk who ſhall have ſo continued under ſuch ſequeſtration or ſequeſtrations, as if the ſame had been avoided by the natural death or reſignation of the party. *ſ.* 33.

Contracts after paſſing this act, for lettinghouſes in which any

All contracts or agreements made after the paſſing of this act, for the letting of houſes of reſidence, or the buildings, gardens, orchards, and appurtenances neceſſary for

for the convenient occupation of the ſame, belonging to any benefice, donative, perpetual curacy, or parochial chapelry, to which houſes of reſidence any ſpiritual perſons ſhall be required, by order of the archbiſhop or biſhop as aforeſaid, to proceed and to reſide therein, a copy of which order ſhall, immediately on the iſſuing thereof, be tranſmitted to one of the churchwardens of the pariſh, and be by him forthwith ſerved on the occupier of ſuch houſe of reſidence, or left at the ſame, ſhall be null and void; and any perſon continuing to hold any ſuch houſe of reſidence, or any ſuch building, garden, orchard, or premiſes, after the day on which the ſaid ſpiritual perſon ſhall be directed by the ſaid order to reſide in ſuch houſe of reſidence, and after ſervice of ſuch copy as aforeſaid, ſhall forfeit *forty ſhillings* for every day he ſhall, without the permiſſion of the archbiſhop or biſhop, in writing for that purpoſe obtained, wilfully continue to hold any ſuch houſe, building, garden, orchard, or premiſes, to be recovered and applied in like manner as the penalties for non-reſidence are directed to be recovered and applied by the proviſions of this act; but in caſes of ſuch contracts or agreements made before the paſſing of this act, the perſon holding and occupying under any ſuch contract or agreement ſhall not be liable to any penalty for *three calendar months* from the time of the ſervice of the copy of ſuch order of the archbiſhop or biſhop as aforeſaid upon ſuch occupier, or at ſuch houſe of reſidence as aforeſaid, ſequeſtration ſhall not iſſue for diſobedience to the order of the archbiſhop or biſhop for three calendar months, to be computed from the ſervice of the copy of the ſaid order, at the expiration of which time it ſhall be lawful for the archbiſhop or biſhop to iſſue ſequeſtration; and from and after the expiration of which time the party continuing to hold any ſuch houſe, building, garden, orchard, premiſes, or appurtenances as aforeſaid, ſhall forfeit the ſum of forty ſhillings for every day he ſhall wilfully continue without ſuch permiſſion in writing as aforeſaid to hold the ſame, or any of them, to be recovered and applied in like manner as aforeſaid. *ſ.* 34.

ſpiritual perſons ſhall by order of the biſhop be required to reſide, ſhall be void; and perſons holding poſſeſſion after the day appointed, ſhall be ſubject to penalty; but in caſes of contracts before paſſing this act, not till three months after ſervice on the occupiers, &c.

Provided always, That no ſpiritual perſon ſhall be liable to any penalties under this or any former act, for not reſiding in ſuch houſe of reſidence during ſuch time as ſuch tenant ſhall continue to occupy ſuch houſe of reſidence,

No perſon liable to penalty for non reſidence, while the tenant ſhall continue to occupy,

and other buildings neceſſary to the occupation of the ſame. *ſ.* 35.

If an action be brought for non-reſidence before iſſuing monition, ſufficient to ſatisfy penalty and coſts ſhall be retained out of the profits of the benefice.

Provided always, That where any action, ſuit, bill, plaint, or information ſhall have been commenced againſt any ſpiritual perſon to whom any monition ſhall be ſent as aforeſaid, before the iſſuing thereof, for any penalty or forfeiture incurred by reaſon of non-reſidence, before the iſſuing of ſuch monition, in ſuch caſe the biſhop or archbiſhop ſending ſuch monition, ſhall upon notice of ſuch action or ſuit, cauſe to be retained ſo much of the profits of the benefice, as will be ſufficient to ſatisfy any penalty, together with ſuch coſts as the plaintiff therein may be entitled to, if any, and ſhall, if a verdict ſhall be given for the plaintiff in ſuch action, and final judgment obtained therein, after deducting all the charges which ſhall have been occaſioned by the ſaid ſequeſtration, to the biſhop or archbiſhop, or any perſon who ſhall have acted therein under his authority, pay to ſuch plaintiff the money that ſhall be recovered in any ſuch action or ſuit, to the plaintiff or plaintiffs therein: Provided always, that if at the time of filing any ſuch monition, no action for any ſuch penalty ſhall have been already commenced, then and in ſuch caſe no ſuch action, &c. ſhall be afterwards brought for any penalty or forfeiture incurred by non-reſidence of ſuch ſpiritual perſon before the iſſuing of ſuch monition, or during any proceedings that may be had under ſuch monition; and if any ſuch action or ſuit ſhall be ſo commenced, the defendant therein may plead, in bar thereof, that ſuch a monition has iſſued in reſpect of the ſame parſonage, vicarage, donative, perpetual curacy or parochial chapelry; and ſuch defendant, unleſs upon application to the court, the ſame ſhall be diſpenſed with, ſhall upon pleading ſuch matter, file an affidavit in the ſaid court, thereby ſtating, that, according to the belief of the defendant, the biſhop, or archbiſhop who has iſſued or cauſed ſuch monition to be iſſued, is proceeding or intends to proceed upon the ſaid monition, to the intent to make the ſame effectual to the intents and purpoſes of this act, otherwiſe ſuch plea ſhall not be good or available in the law. *ſ.* 36.

If at the time of filing any monition, no action ſhall have been commenced, none ſhall be afterwards brought, &c.

No oath relating to reſidence ſhall be required of any vicar.

From the paſſing of this act, no oath ſhall be required of or taken by any vicar, in relation to reſidence on his vicarage. *ſ.* 37.

All

All the clauſes, proviſions, penalties, and forfeitures in this act contained, in relation to reſidence, or to any other matters and things relating thereto, ſhall extend and be deemed and conſtrued to extend to all dignities, prebends, benefices, donatives, perpetual curacies, and all parochial chapelries, exempt as well as not exempt, and all peculiars, as fully and amply to all intents and purpoſes as if the ſame had been and were in this act particularly mentioned and ſpecified. *f.* 38.

Act to extend to all dignities, prebends, benefices, &c.

Every archbiſhop, biſhop, and archdeacon, within the limits of whoſe province, dioceſe, or juriſdiction reſpectively, any dignity, benefice, donative, perpetual curacy, or parochial chapelry reſpectively, exempt or peculiar, ſhall be *locally* ſituate, ſhall have, uſe, and exerciſe, all the powers and authorities neceſſary for the due execution by them reſpectively, of the proviſions and purpoſes of this act, and for enforcing the ſame with regard thereto reſpectively, as ſuch archbiſhop, &c. would have uſed and exerciſed, if the ſame were not exempt or peculiar, but were ſubject in all reſpects to the juriſdiction of ſuch archbiſhop, biſhop, or archdeacon; and alſo that where any benefice, donative, perpetual curacy, or parochial chapelry, exempt or peculiar, ſhall be *locally* ſituate within the limits of more than one province, dioceſe, or juriſdiction, or where the ſame, or any of them, ſhall be locally ſituate between the limits of any two or more of ſuch provinces, dioceſes, or juriſdictions or any of them, the archbiſhop or biſhop to the cathedral church of whoſe province or dioceſe, the pariſh church of the ſame reſpectively ſhall be neareſt in local ſituation, ſhall have, uſe, and exerciſe all the powers and authorities which are neceſſary for the due execution of the proviſions of this act, and enforcing the ſame with regard thereto reſpectively, as ſuch archbiſhop or biſhop could have uſed, if the ſame were not exempt or peculiar, but were ſubject in all reſpects to the juriſdiction of ſuch archbiſhop or biſhop reſpectively; and the ſame, for all the purpoſes of this act, ſhall be deemed and taken to be within the limits of the province or dioceſe of ſuch archbiſhop or biſhop; and the ſame ſhall alſo for the purpoſes of this act, be taken to be within the archdeaconry of, and be ſubject to the juriſdiction of ſuch archdeacon as hath juriſdiction as ſuch over the pariſh, the pariſh church of which is neareſt to the church of

Archbiſhop, biſhop, and archdeacon, within whoſe reſpective province, dioceſe, or juriſdiction, ſhall be locally ſituate any benefice, *etc.* exempt or peculiar, ſhall have the ſame powers as if they were not ſo; and where any ſuch benefice, *etc.* ſhall be ſituate in more than one province, *etc.* or between the limits of two, the archbiſhop or biſhop to whoſe cathedral the pariſh church ſhall be neareſt, ſhall have the like powers, *etc.*

such benefice, donative, perpetual curacy, or parochial chapelry, exempt or peculiar. Provided, that the peculiars belonging to any archbiſhoprick or biſhoprick, though locally ſituated in another dioceſe, ſhall continue ſubject to the archbiſhop or biſhop to whom they belong, as well for the purpoſes of this act, as for all other purpoſes of eccleſiaſtical juriſdiction in the laws whatſoever. *ſ.* 39.

Peculiars ſhall be ſubject to the archbiſhop or biſhop to whom they belong, though ſituate in another dioceſe.

Provided always, That nothing in this act contained ſhall extend, or be conſtrued to extend, to alter or affect his Majeſty's royal prerogative in the granting of diſpenſations for non-reſidence upon benefices, as the ſame now exiſts by law; nor to affect any privileges of clerks retained in his Majeſty's ſervice under the ſtatute paſſed in the ninth year of *Edward* the ſecond, intituled, *Clerks in the King's ſervice ſhall be diſcharged of their reſidence, but ſhall be corrected by their ordinary.* *ſ.* 40.

Act not to affect his Majeſty's prerogative in granting diſpenſations, nor to affect clerks retained in his ſervice under 9 *Edw.* 2. c. 8.

And, to the intent to avoid all doubts, No archbiſhop or biſhop having, or who ſhall have, any dignity, prebend, benefice, donative, or perpetual cure, ſhall, by reaſon of non-reſidence upon the ſame, be ſubject or liable to any penalties or forfeitures. *ſ.* 41.

No archbiſhop or biſhop ſhall be liable to the penalties for non-reſidence.

By *ſ.* 42, 43, & 44. No penalty ſhall be incurred under this act for non-reſidence prior to *Jan.* 1, 1804; nor for farming under this or any other act till *April* 5, 1804—and this act not to extend beyond *England.*

By the laſt *ſection.* If any execution ſhall have been ſued out between *July* 7, 1803, and the day after paſſing this act, the judge may direct the repayment of ſo much of penalties and coſts levied as exceeds what the defendant would have been liable to if no execution had been ſued out.

TYTHE TABLES.

TO illuſtrate the following Tables, it is neceſſary to premiſe, that there are *three* different modes of compounding for tythes, viz.*

1ſt. By a valuation of the ſtanding crops, and ſale of the tythe, *when arrived at maturity.*

2dly. By an agreement, ſtipulating generally for a *certain ſum per acre*, for the different ſpecies of crops, however ariſing, and whether ultimately, or not, productive.

3dly. By a general payment of a *fixed ſum for every acre*, whether cropped or not, throughout the ſeveral farms.

The two firſt methods are liable to conſiderable inconveniences: the third is not only the moſt certain, but would, probably, prove the moſt permanent compoſition, were the parties liberally diſpoſed towards each other.

By this method, alſo, the tytheholder, or his ſurveyor, having, by previous meaſurement, eſtimated the quantity of acres, the quality of the ſoil, with the proportion of arable to paſture, and the purpoſes to which they are uſually applied, might be enabled to compound ſeparately with each landholder.

The following Tables are eſtimated not according to the extraordinary prices of the preſent times, but according to thoſe received in common years.†

* Bearblock on Tythes, p. 8.

† The rates, and ſome of the quantities, are calculated according to thoſe laid down by Mr. Bearblock. Theſe tables, however, are conſiderably enlarged, and preſented under a new arrangement.

AGISTMENT OF CATTLE.

	Marsh Pasture.						*Upland Ditto.*					
	From Lady-day to Mich. per week.			From Mich. to Lady-day, per week.			From Lady-day to Mich. per week.			From Mich. to Lady-day per week.		
CATTLE.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.
Large beasts -	0	3	0	0	4	6	0	2	0	0	4	0
Smaller do. -	0	2	6	0	4	0	0	2	0	0	3	6
2 Years old do.	0	2	0	0	3	4	0	1	8	0	3	0
Yearling do. -	0	1	6	0	2	6	0	1	4	0	2	0
Horses above 2 years old -	0	3	0	0	5	0	0	2	6	0	4	0
2 Year old colts	0	2	0	0	3	6	0	2	0	0	3	0
Yearling colts -	0	1	6	0	2	6	0	1	6	0	2	6
SHEEP.												
Large sheep -	0	0	6	0	0	8	0	0	5	0	0	7
Smaller do. or lambs weaned	0	0	5	0	0	7	0	0	4	0	0	6
Couples - -	0	0	6	0	0	9	0	0	6	0	0	8
	On turnips, cole-seed, &c.						*On Vetches.*					
Large Sheep -	0	0	8	0	0	8	0	0	6	0	0	6
Smaller do. or weaned lambs	0	0	4	0	0	6	0	0	7	0	0	7
Couples - -	0	0	9	0	0	9	.....			.....		
CATTLE.												
Large beasts -	0	4	0	0	4	0	.....			.....		
Smaller do. -	0	3	4	0	3	4	.....			.....		
Hogs, on clover or meadow-grass	0	0	6	0	0	6	.....			.....		

Note.—Where the value of agistment varies from the preceding terms, the price usually given in that parish for depasturing of sheep, beasts, and horses, upon land of similar quality, will regulate the tythe. Profitable cattle, as long as they remain so, pay no agistment tythe.

Profitable cattle are such animals as yield a tythe from themselves, viz.—cows, yielding calves and milk—ewes, their wool and lambs—brood mares, their foals—sows, their pigs, &c.

BARLEY.*

GRAIN.

Bushels per acre.	Rate per bushel. £.	s.	d.	Value. £.	s.	d.	Tythe. £.	s.	d.
25	0	3	0	3	15	0	0	7	6
28				4	4	0	0	8	4¼
32				4	16	0	0	9	7
36				5	8	0	0	10	9½
40				6	0	0	0	12	0
44				6	12	0	0	13	2¼
25	0	3	3	4	1	3	0	8	1½
28				4	11	0	0	9	1
32				5	4	0	0	10	4¼
36				5	17	0	0	11	8¼
40				6	10	0	0	13	0
44				7	3	0	0	14	3½
28	0	3	6	4	18	0	0	9	9½
32				5	12	0	0	11	2¼
36				6	6	0	0	12	7
40				7	0	0	0	14	0
44				7	14	0	0	15	4¼
28	0	3	9	5	5	0	0	10	6
32				6	0	0	0	12	0
36				6	15	0	0	13	6
40				7	10	0	0	15	0
44				8	5	0	0	16	6
28	0	4	0	5	12	0	0	11	2¼
32				6	8	0	0	12	9½
36				7	4	0	0	14	4¼
40				8	0	0	0	16	0
44				8	16	0	0	17	7

Average Crop.

36 Bushels per acre, at 3*s.* 6*d.* per bushel.—Value 6*l.* 6*s.*
Tythe 12*s.* 7*d.*

* In valuing the tythe of barley, oats, peas, and beans, all the straw must be given as a compensation for all expences in collecting, threshing, and carrying out the corn.

BEANS.

BEANS.

Bushels per acre.	Rate per bushel. £.	s.	d.	Value. £.	s.	d.	Tythe. £.	s.	d.
24	0	3	3	3	18	0	0	7	9½
26				4	4	6	0	8	5¼
28				4	11	0	0	9	1
29				4	14	3	0	9	5
33				5	7	3	0	10	8½
38				6	3	6	0	12	4
42				6	16	6	0	13	7¼
44				7	3	0	0	14	3½
24	0	3	6	4	4	0	0	8	4¼
26				4	11	0	0	9	1
28				4	18	0	0	9	9¾
29				5	1	6	0	10	1¾
33				5	15	6	0	11	6¼
38				6	13	0	0	13	3½
42				7	7	0	0	14	8¾
44				7	14	0	0	15	4¾
24	0	3	9	4	10	0	0	9	0
26				4	17	0	0	9	9
28				5	5	0	0	10	6
29				5	8	9	0	10	10¼
33				6	3	9	0	12	4½
38				7	2	6	0	14	3
42				7	17	6	0	15	9
44				8	5	0	0	16	6
24	0	4	0	4	16	0	0	9	7
26				5	4	0	0	10	4¾
28				5	12	0	0	11	2¼
29				5	16	0	0	11	7
33				6	12	0	0	13	2¼
38				7	12	0	0	15	2¼
42				8	8	0	0	16	9½
44				8	16	0	0	17	7
24	0	4	3	5	2	0	0	10	2¼
26				5	10	6	0	11	0¼
28				5	19	0	0	11	10¼
29				6	3	3	0	12	3¼

BEANS (continued).

Buſhels per acre	Rate per buſhel. £.	s.	d.	Value. £.	s.	d.	Tythe. £.	s.	d.
33	0	4	3	7	0	3	0	14	0¼
38				8	1	6	0	16	1¼
42				8	18	6	0	17	9
44				9	7	0	0	18	8¼
24	0	4	6	5	8	0	0	10	9½
26				5	17	0	0	11	8¼
28				6	6	0	0	12	7
29				6	10	6	0	13	0½
33				7	8	6	0	14	10
42				9	9	0	0	18	10½
44				9	18	0	0	19	9½
24	0	4	9	5	14	0	0	11	4¼
28				6	13	0	0	13	3½
29				6	17	9	0	13	9¾
33				7	16	9	0	15	8
38				9	0	6	0	18	0¼
42				9	19	6	0	19	11¼
44				10	9	0	1	0	10¼

Average Crop.

32 Buſhels per acre, at 3*s.* 10½*d.* per buſhel.—Value 6*l.* 4*s.* —Tythe 12*s.* 4¼*d.*

N.B. In calculating this Tythe, the ſtraw is allowed to defray the expences in collecting, threſhing, &c.

CABBAGES.

Value per Acre.	*Tythe per Acre.*
From 2*l.* to 4*l.*	From 4*s.* to 8*s.*

CALVES.

CALVES.

As the market-price varies from 1*l.* to 3*l.* according to the ſeaſons and demand for ſucklers; where any perſon is not likely to have ten in one year, ſo that the tenth can be ſet forth, each calf muſt be valued at the time of weaning, or ſale, and the tenth part of the value accounted for.

COLE-SEED, eaten off.

Value per Acre.	*Tythe per Acre.*
From 4*l.* to 6*l.*	From 8*s.* to 12*s.*

CLOVER. See *Hay.*

GARDEN GROUND.	GARDEN WALL.*
Tythe per acre 1s. 10*d.*	Tythe per rod 9*d.*

GREEN TARES.

Theſe cut green, and given in that ſtate to cattle, are a great tythe, and worth from five to ſix guineas per acre. The value of the tythe from 10*s.* 6*d.* to 12*s.* 7*d.* per acre.

* Upon ſuppoſition that they are ſtocked, and properly managed.

HAY.

HAY.*

Clover.									Meadow.								
Loads per A.	Per load.		Value.			Tythe.			Loads per A.	Per load.		Value.			Tythe.		
	£.	s.	£.	s.	d.	£.	s.	d.		£.	s.	£.	s.	d.	s.	d.
1	3	0	3	0	0	0	6	0	1	2	10	2	10	0	5	0
1¼			3	15	0	0	7	6	1¼			3	2	6	6	3
1½			4	10	0	0	9	0	1½			3	15	0	7	6
1¾			5	5	0	0	10	6	1¾			4	7	6	8	9
2			6	0	0	0	12	0	2			5	0	0	10	0
1	3	10	3	10	0	0	7	0	1	3	0	3	0	0	6	0
1¼			4	7	6	0	8	9	1¼			3	15	0	7	6
1½			5	5	0	0	10	6	1½			4	10	0	9	0
1¾			6	2	6	0	12	3	1¾			5	5	0	10	6
2			7	0	0	0	14	0	2			6	0	0	12	0
1	4	0	4	0	0	0	8	0	1	3	10	3	10	0	7	0
1¼			5	0	0	0	10	0	1¼			4	7	6	8	9
1½			6	0	0	0	12	0	1½			5	5	0	10	6
1¾			7	0	0	0	14	0	1¾			6	2	6	12	3
2			8	0	0	0	16	0	2			7	0	0	14	0
1	4	10	4	10	0	0	9	0	1	4	0	4	0	0	8	0
1¼			5	12	6	0	11	3	1¼			5	0	0	10	0
1½			6	15	0	0	13	6	1½			6	0	0	12	0
1¾			7	17	6	0	15	3	1¾			7	0	0	14	0
2			9	0	0	0	18	0	2			8	0	0	16	0
1	5	0	5	0	0	0	10	0	1	4	10	4	10	0	9	0
1¼			6	5	0	0	12	6	1¼			5	12	6	11	3
1½			7	10	5	0	15	0	1½			6	15	0	13	6
1¾			8	15	0	0	17	6	1¾			7	17	6	15	3
2			10	0	0	1	0	0	2			9	0	0	18	0

* The compoſition for this tythe muſt depend entirely upon local circumſtances. The tytheholder ſhould make all reaſonable deductions for attendant expences. This table commences with the eſtimate of a ſcanty and inferior crop, but progreſſively advances to a produce ſound and moderately productive.

Tares, hay, ſainfoin, &c. being nearly equal in price and produce, may be eſtimated by the table of clover-hay.

LAMBS.

LAMBS.

As this depends upon the different breeds, no precife ſtandard for valuation can be given: the payment of this may, however, be eſtimated by the production of the ſaleman's or butcher's bill; or the lambs drawn for market may be previouſly valued.

Lambs are tytheable when they can live without their dam, and when the occupier weans his own lambs, and not before.—*Croft* v. *Blake*, *Gwil. Caſ.* 1. *vol.* 2. *p.* 530.

The proper time for ſetting forth tythe lambs, in Lincolnſhire, *Heaton* v. *Regal*, *Gwil. Caſ. vol.* 2. *p.* 680.

Tythe of Agiſtment muſt be paid for all lambs fold before they are ſheared, from the time when they are weaned till the day of their removal.

MILK.

Mr. Bearblock ſets down the following eſtimate of the produce of a cow, for one year, viz.

	£.	s.	d.
One calf - - -	1	5	0
Ten quarts of milk per day, for three months, at 2*d.* - -	7	11	8
Six quarts do do. do.	4	11	0
Four quarts do. for two months -	2	0	0
	15	7	8
Tythe - -	£.1	10	0

MILLS.

This is a perſonal tythe, and the tenth of the net annual profits is due, after deducting the rent, and all expences of the year. In caſe of a new mill, in the occupation of the owner, the whole expences of building the mill are not to be deducted from the firſt profits, but a yearly value, in the nature of a rent, is to be ſet upon it, and deducted.—*Hall* v. *Machet*, *Gwil. Caſ. vol.* 4. *p.* 1460.

OATS.

OATS.

GRAIN. Bush. per A.	Per bushel. s.	d.	Value. £.	s.	d.	Tythe. s.	d.
28	2	6	3	10	0	7	0
29			3	12	6	7	3
32			4	0	0	8	0
34			4	5	0	8	6
36			4	10	0	9	0
38			4	15	0	9	6
40			5	0	0	10	0
43			5	7	6	10	9
48			6	0	0	12	0
28	2	9	3	17	0	7	8¾
29			3	19	9	7	11½
32			4	8	0	8	9½
34			4	13	6	9	4
36			4	19	0	9	10¾
38			5	4	6	10	5¼
40			5	10	0	11	0
43			5	18	3	11	9¼
48			6	12	0	13	2½
28	3	0	4	4	0	8	4¼
29			4	7	0	8	8
32			4	16	0	9	7
34			5	2	0	10	2¼
36			5	8	0	10	9½
38			5	14	0	11	4¼
43			6	9	0	12	10¼
48			7	4	0	14	4¼
28	3	3	4	11	0	9	1
29			4	14	3	9	5
32			5	4	0	10	4¼
34			5	10	6	11	0½
36			5	17	0	11	8¼

GRAIN. Bush. per A.	Per bushel. s.	d.	Value. £.	s.	d.	Tythe. s.	d.
38	3	3	6	3	6	12	4
40			6	10	0	13	0
43			6	19	9	13	11¼
48			7	16	0	15	7
28	3	6	4	18	0	9	9½
29			5	1	6	10	1¾
32			5	12	0	11	2¼
34			5	19	0	11	10¼
36			6	6	0	12	7
38			6	13	0	13	3½
40			7	0	0	14	0
43			7	10	6	15	0½
48			8	8	0	16	9½
28	3	9	5	5	0	10	6
29			5	8	9	10	10¼
32			6	0	0	12	0
34			6	7	6	12	9
36			6	15	0	13	6
38			7	2	6	14	3
40			7	10	0	15	0
43			8	1	3	16	1½
48			9	0	0	18	0
28	4	0	5	12	0	11	2¼
29			5	16	0	11	7
32			6	8	0	12	9¾
34			6	16	0	13	7
36			7	4	0	14	4¼
38			7	12	0	15	2¼
40			8	0	0	16	0
43			8	12	0	17	2¼
48			9	12	0	19	2¼

Average Crop.

38 Bushels per acre, at 3s. per bushel.—Value 5*l.* 14s.—Tythe 11*s.* 4¼*d.*

PASTURE.

	Marsh.	*Upland.*	*Clover Etches*	*Stubble*	*After Pasture*
	Value of Tythe per acre.	Value of Tythe per acre.	Value of Tythe per acre.	Value of Tythe per acre.	Value of Tythe per acre.
Average tythe	10*s.* to 15*s.* 12*s.* 6*d.*	8*s.* to 12*s.* 10*s.*	1*s.* 6*d.* to 2*s.* 6*d.* 2*s.*	1*s.* to 1*s.* 6*d.* 1*s.* 3*d.*	1*s.* 6*d.* to 3*s.* 2*s.* 3*d.*

PEAS.

GRAIN.

Bush. per A.	per bushel.	Value.	Tythe.
	s. *d.*	£. *s.* *d.*	*s.* *d.*
22	3 6	3 17 0	7 8½
23		4 0 6	8 0½
26		4 11 0	9 1
30		5 5 0	10 6
33		5 15 6	11 6½
38		6 13 0	13 3½
44		7 14 0	15 4½
22	3 9	4 2 6	8 3
23		4 6 3	8 7
26		4 17 6	9 7
30		5 12 6	11 3
33		6 3 9	12 4
38		7 2 6	14 3
44		8 5 0	16 6
22	4 0	4 8 0	8 9½
23		4 12 0	9 2½
26		5 4 0	10 4½
30		6 0 0	12 0
33		6 12 0	13 2½
38		7 12 0	15 2½
44		8 16 0	17 7

GRAIN.

Bush. per A.	Per bushel.	Value.	Tythe.
	s. *d.*	£. *s.* *d.*	*s.* *d.*
22	4 3	4 13 6	0 9 4
23		4 17 9	0 9 9½
26		5 10 6	0 11 0½
30		6 7 6	0 12 9
33		7 0 3	0 14 0½
38		8 1 6	0 16 1½
44		9 7 0	0 18 8½
22	4 6	4 19 0	0 9 10½
23		5 3 6	0 10 4
26		5 17 0	0 11 8½
30		6 15 0	0 13 6
33		7 8 6	0 14 10
38		8 11 0	0 17 1
44		9 18 0	0 19 9½
22	4 9	5 4 6	0 10 5½
23		5 9 3	0 10 11
26		6 8 6	0 12 4
30		7 2 6	0 14 3
33		7 16 9	0 15 8
38		8 0 6	0 16 0½
44		10 9 0	1 0 10½

Average Crop.

28 Bushels per acre, at 4*s.* per bushel.—Value 5*l.* 12*s.*
—Tythe 11*s.* 2¼*d.*

White

White peas being 3d. per buſhel dearer than grey—commencing at 3s. 9d. per buſhel, and proceeding progreſſively from 4s.—4s 6d. to 4s. 9d. inclusive, produce the ſame tythes as grey, at the ſame rate per buſhel.

WHITE PEAS.

Buſhels per acre.	Rate per buſhel. £.	s.	d.	Value. £.	s.	d.	Tythe. £.	s.	d.
22				5	10	0	0	11	0
23				5	15	0	0	11	6
26				6	10	0	0	13	0
30	0	5	0	7	10	0	0	15	0
33				8	5	0	0	16	6
38				9	10	0	0	19	0
44				11	0	0	1	2	0

Average Croſt.

28 Buſhels per acre, at 4s. 4½d. per buſhel.—Value 6*l.* 2*s.* 6*d.*
Tythe 12*s.* 3*d.*

PEAS gathered green by Hand.

Sacks per acre.	Per ſack. £.	s.	d.	Value. £.	s.	d.	Tythe. £.	s.	d.
24				5	8	0	0	10	9½
25				5	12	6	0	11	3
27	0	4	6	6	1	6	0	12	1¾
32				7	8	6	0	14	10
38				8	11	0	0	17	1
40				9	0	0	0	18	0
24				6	0	0	0	12	0
25				6	5	0	0	12	6
27	0	5	0	6	15	0	0	13	6
33				8	5	0	0	14	6
38				9	10	0	0	19	0
40				10	0	0	1	0	0
24				7	4	0	0	14	4¾
25				7	10	0	0	15	0
27	0	6	0	8	2	0	0	16	2¼
33				9	18	0	0	19	9½
38				11	8	0	1	2	9½
40				12	0	0	1	4	0

PEAS gathered green by Hand (continued).

Sacks per acre.	Per sack.			Value.			Tythe.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
24	0	7	0	8	8	0	0	16	9½
25				8	15	0	0	17	6
27				9	9	0	0	18	10½
33				11	11	0	1	3	1
38				13	6	0	1	6	7
40				14	0	0	1	8	0
24	0	8	0	9	12	0	0	19	2½
25				10	0	0	1	0	0
27				10	16	0	1	1	7
33				13	4	0	1	6	4½
38				15	4	0	1	10	4½
40				16	0	0	1	12	0
24	0	9	0	10	16	0	1	1	7
25				11	5	0	1	2	6
27				12	3	0	1	4	3½
33				14	17	0	1	9	8½
38				17	2	0	1	14	2½
40				18	0	0	1	16	0

Average Crop.

30 Bushels per acre, at 5*s* 6*d*. per bushel.—Value 8*l*. 5*s*.—Tythe 16*s*. 6*d*.

N.B. Peas sown in fields after the garden system, are classed among great tythes, provided neither usage nor endowment have established them otherwise.—Sims v. Bennet, Gwil. vol 3. p. 874.

PIGS.

Pigs are tytheable, like other young animals, when able to live without the sow, viz. at *four* or *five* weeks old. If the whole litter be sold, a tenth part of the price may be taken in lieu of tythe in kind; and, if reserved for store

ſtore or fattening, a tenth part of their value. Under an annual compoſition, any ſum from 7*s.* 6*d.* and 10*s.* is conſidered as a reaſonable compoſition for every ſow, in lieu of pigs.

POTATOES.

Tons per acre.	Rate per ton.			Value.			Tythe.		
	£.	*s.*	*d.*	*£.*	*s.*	*d.*	*£.*	*s.*	*d.*
4	3	0	0	12	0	0	1	4	0
4½				13	10	0	1	7	0
4¾				14	5	0	1	8	6
5				15	0	0	1	10	0
6				18	0	0	1	16	0
7				21	0	0	2	2	0
8				24	0	0	2	8	0
4	4	0	0	16	0	0	1	12	0
4½				18	0	0	1	16	0
5				20	0	0	2	0	0
6				24	0	0	2	8	0
7				28	0	0	2	16	0
8				32	0	0	3	4	0
4	5	0	0	20	0	0	2	0	0
5				25	0	0	2	10	0
6				30	0	0	3	0	0
7				35	0	0	3	10	0
8				40	0	0	4	0	0
4	6	0	0	24	0	0	2	8	0
5				30	0	0	3	0	0
6				36	0	0	3	12	0
7				42	0	0	4	4	0
8				48	0	0	4	16	0

Average Crop.

5 Tons per acre, at 3*l.* per ton.—Value 15*l.*—Tythe 1*l.* 10*s.*

POULTRY.

The value of this can be aſcertained by no certain rule of compoſition, but muſt entirely depend upon the quantity that may be bred.

RYE.

GRAIN. Buſh. perA.	Per buſhel. s. d.	Value. £. s. d.	STRAW. Loads per acre.	Per load.	Total. £. s. d.	Tythe. s. d.
20	3 3	3 5 0	3	£2*	6 5 0	12 6
24		3 18 0			6 18 0	13 9½
28		4 11 0			7 11 0	15 1
20	3 6	3 10 0			6 10 0	13 0
24		4 4 0			7 4 0	14 4½
28		4 18 0			7 18 0	15 9½
20	3 9	3 15 0			6 15 0	13 6
24		4 10 0			7 10 0	15 0
28		5 5 0			8 5 0	16 6
20	4 0	4 0 0			7 0 0	14 0
24		4 16 0			7 16 0	15 7
28		5 12 0			8 12 0	17 2½
20	4 3	4 5 0			7 5 0	14 6
24		5 2 0			8 2 0	16 2½
28		5 19 0			8 19 0	17 10½
20	4 6	4 10 0			7 10 0	15 0
24		5 8 0			8 8 0	16 9½
28		6 6 0			9 6 0	18 7
20	4 9	4 15 0			7 15 0	15 6
24		5 14 0			8 14 0	17 4½
28		6 13 0			9 13 0	19 3½

Average Crop.

22 Buſhels per acre, at 4*s.* per buſhel.—Value 4*l.* 8*s.*—3 Loads of ſtraw per acre, at 1*l.* per load.—Total 7*l.* 8*s.*—Tythe 14*s.* 9½*d.*

* Deducting one-half throughout.

TARES.

TARES,

Eaten off before they become a crop fit for mowing, value from 40*s.* to 3*l.* per acre; tythe from 4*s.* to 6*s.* per acre.

It is presumed, upon the authority of the two cases 2d *Austen* 482. and *Mantell* v. *Paine*, 4*th Gwil*, 1504. that the rector is not entitled to tythes of tares cut green, and, *for want of other sufficient fodder*, given to agricultural cattle only; but the farmer is not at liberty to sell the hay, which (after paying the tythe of the hay crop) has been carried to the stack-yard.

	Tares eaten off.			*Tares cut green*			*For Seed.*		
	£.	*s.*	*d.*	£.	*s.*	*d.*	£.	*s.*	*d.*
Crop per acre	2	10	0	5	5	0	10	16	0
Tythe -	0	5	0	0	10	6	1	1	7

TURNIPS.

	*Fallow.**		*Etch.*†	
	Value per acre.	Tythe.	Value per acre.	Tythe.
Average crop	4*l.* to 6*l.* 5*l.*	8*s.* to 12*s.* 10*s.*	2*l.* to 4*l.* 3*l.*	4*s.* to 8*s.* 6*s.*

* Sown upon land previously prepared by a fallow.

† Late-sown turnips, upon etches or stubbles, broken-up immediately after harvest.

WHEAT.

GRAIN. Bush. per A	Per bushel. s.	d.	Value. £.	s.	STRAW. Loads* per acre.	Per load. £.	s.	Total. £.	s.	d.	Tythe. £.	s.	d.
20	6	0	6	0	2½	1	4†	7	0	0	0	14	0
22			6	12				7	12	0	0	15	2¼
24			7	4				8	4	0	0	16	4½
28			8	8				9	8	0	0	18	9½
32			9	12				10	12	0	1	1	2¼
20	6	6	6	10				7	10	0	0	15	0
22			7	3				8	3	0	0	16	3½
24			7	16				8	16	0	0	17	7
28			9	2				10	2	0	1	0	2¼
32			10	8				11	8	0	1	2	9½
20	7	0	7	0				8	0	0	0	16	9
22			7	14				8	14	0	0	17	4¼
24			8	8				9	8	0	0	18	9½
28			9	16				10	16	0	1	1	7
32			11	4				12	4	0	1	4	4¼
20	7	6	7	10				8	10	0	0	17	0
22			8	5				9	5	0	0	18	6
24			9	0				10	0	0	1	0	0
28			10	10				11	10	0	1	3	0
32			12	0				13	0	0	1	6	0
20	8	0	8	0				9	0	0	0	18	0
22			8	16				9	16	0	0	19	7
24			9	12				10	12	0	1	1	2¼
28			11	4				12	4	0	1	4	4½
32			12	16				13	16	0	1	7	7

Average Crop.

23 Bushels per acre, at 7*s*.3*d*. per bushel.—Value 8*l*. 6*s*. 9*d*.
—2½ Loads of straw per acre, at 1*l*. 4*s*. per load.—
Deducting two-thirds.—Total 9*l*. 6*s*. 9*d*.—Tythe 18*s*. 8*d*.

* From the variety of management with respect to straw, this article is, perhaps, here rather over-rated in its produce.
† Deducting two-thirds for expenses of collecting, &c.

The

The average crops here given, are not perhaps according to the ſtrict definition of the term *average*, or middle price: but as theſe calculations are intended for landholders of every county, theſe rules are applicable to land of *moderate* quality.

The foregoing table is according to the firſt method of compounding, viz.—By a valuation of the ſtanding crops, and ſale of the tythe, when they are arrived at maturity.

It is conceived, that the portion of ſtraw which is deducted, will cover all expences of collecting, threſhing, or carrying out the corn.

WOOD.

Timber trees of the age of twenty years, or above, whether they are timber by common law or by cuſtom, are not liable to payment of tythes, either of the bodies or lops of ſuch trees, for whatſoever purpoſe they may be cut, provided ſuch trees have never been lopped or topped before they arrived at the age of twenty years; but if lopped before and afterwards occaſionally, from time to time, ſuch lops ſhall pay tythes, the tree not having acquired the privilege. Situation and circumſtances have ſo powerful an influence upon this tythe, that it muſt depend upon its local value, when fairly ſet forth in tytheable order.

WOOL.

Take the weight of the whole number of fleeces, and let payment be for the tenth part, according to the current price of wool per lb.

INDEX.

INDEX.

A.

ABBEYS and Monaſteries exempt from tythes under the 31 *H.* 8. - - Page 137
Abbey-Lands, various ways in which they are diſcharged of tythes - 19
Acorns, in what caſes tytheable 25
Advowſon, what it is 6
——— different kinds of ib.
——— every one has tythes annexed - - ib.
Aftermowth or ſecond mowth, general rules reſpecting it 25
Agiſtment of cattle - - 26
——— different ſpecies of cattle ſubject to this tythe ib.
——— general rules for payment of - 27, 28
——— table of - 170
Alders ſubject to tythe 31
Altarage, what it is - ib.
Apples, how tytheable 32
Appropriation, explanation of it 1
——— how to be ſevered, and a church made diſappropriate - - 2
Archbiſhops may grant licences for non-reſidence, within their reſpective dioceſes, ſee Appendix. - - 153
Aſh, when deemed timber, tythe free - - 32
Aſp trees, ditto - ib.
Average crops. See *Tythe-table*

B.

Bark, where the tree from whence taken is timber-tree, not ſubject to tythes - 32
——— true explanation of under 2 *Edw.* 6. ib.
Barley, table of compoſition, for 171
Beans, do, do. - 172
Barren-Land, what is ſo conſtrued - 12
——— ſheep kept upon, and yielding a profit to the owner, ſubject to tythes within the ſeven years - ib.
Beans and Peas planted in rows deemed ſmall tythes, and payable to impropriator 32
Beech, maſt of, how conſidered 33
——— by common law not conſidered as timber - ib.
——— and ſubject to tythe, has been adjudged privileged by St. Sylv. Cædua - ib.
Bees in their wild ſtate tythe free, but pay tythes if gathered in hives - - ib.
——— in hives, pay *tenth* meaſure of honey, and *tenth* pound of wax - - ib.
Birch, ſubject to tythe, though of twenty years growth ib.
Broom, if dug up for tillage, is tytheable, if uſed for huſbandry not - - ib.

C.

Cabbages, table of compoſition for 173, 174
Calves, how tythes of, are paid 33
Cattle, tytheable depaſtured on waſtes or common ground, where pariſh not certainly known, to pay tythes to the parſon of the pariſh where owner of ſuch cattle dwell 34
——— perſons not liable to theſe tythes where ſettled by compoſition - - 34
——— fed on waſte ground, where boundaries of pariſh are uncertain, pay tythes to incumbent where owner inhabits, unleſs exempt - - ib.

Chalk,

Chalk, tythe free, being of the ſubſtance of the earth 34
Cheeſe, not tytheable where milk has paid tythes - ib.
Church, nature of its endowments under 4 *H.* 4. c. 12. ib.
Clay, not tytheable - ib.
Cherries, black, have been held ſubject to tythe - ib.
Cherry-trees - - ib.
Chickens, when tytheable ib.
Clerk how preſented to a parſonage or vicarage - 4
—— if biſhop refuſe to preſent him, patron may proceed againſt him - 5
—— on inſtitution, may enter and take tythes, but cannot grant, let, or bring actions until induction - ib.
Clover, in what caſes tytheable 34
—— tythes of, to whom payable ib.
Coal, not tytheable - 35
Cole-ſeed, compoſition for 174
Colts, when tytheable, ſee *Calves*.
Compoſition real, explained 14
Conies, not tytheable, except by cuſtom - 36
Corporations appropriated, how ſerved formerly in their eccleſiaſtical functions 3
Corn, a predial great tythe, and payable according to the cuſtom of the place - 35
—— tythe how to be ſet out 36
Cuſtom or Preſcription, what 15
—— diſtinctions between them - ib.
—— what makes a good one - ib.

D.

Dotards, or old decayed trees, exempt from tythe as *ſylva cædua* - - 36
Doves, kept in dove-houſe, may pay tythe by cuſtom 37
—— in what caſes paying a certain number conſtitutes a good modus - ib.

E.

Eaſter offerings. See *Offerings*
Eccleſiaſtical courts, how they proceed. See *Tythes*.
—— *leaſes*. See *Leaſes*
—— *livings*, all bonds and covenants for, how far void by 18 *Eliz.* - 91
Eggs, how tytheable - 37
—— where paying a certain number held a good modus ib.
Elm, deemed timber, and within the privilege of *ſylva cædua* ib.
Exemption from tythes by modus, cuſtom or preſcription 14, 15
Extra parochial tythes. See *Tythes*

F.

Fallow, not ſubject to tythe, if for apparent benefit of the ſoil 37
Farms or *Leaſes* under 21 *H.* 8. and 5 *Geo.* 3. See *Leaſes*.
Fens, being drained, are not exempt from tythe - 12
Feany-land, what is ſo conſidered ib.
Feræ Naturæ, what are ſo deemed 10
Fillies pay tythe till employed in buſineſs or huſbandry, or bear foals - - 27
Fiſh, ſea and river, tytheable by cuſtom - - 38
Foreſt-lands, how tythe of, to whom payable - 10
Flax, a ſmall tythe, though ſown in large fields - ib.
Fowls, as hens, geeſe, ducks, &c. are tytheable, either in eggs or young, but not in both ib.
Fruit, apples, pears, plums, cherries, &c. when gathered, pay tythe in kind - ib.
Fuel, of any kind, ſpent in owner's houſe pays no tythe ib.
—— uſed in drying hops, an exception to this rule - 38
Furzes, if uſed for fuel or to pen ſheep, not ſubject to tythe 39

G.

Gardens, pay tythe of herbs and plants - 39

Garden-ground, compoſition for 174
Glaſs-houſe, not ſubject to tythe in kind - 39
Glebe land, what it is 13
——— leaſed by parſon, and tythes there of not granted, ſuch tythes muſt be paid by the tenant - - 8
——— ſame rule applies where leaſes made by impropriators, vicars, &c. - ib.
——— explained - ib.
——— profits of, how they operate on a demiſe ib.
Green-tares, compoſition for 174
Grants, made by a prebend, how to be confirmed - 88
——— by deans, do. ib.
——— by archdeacons, do. ib.
——— by parſons and vicars, do. ib.
——— by the incumbent of a donative, do. - ib.
Gravel, not ſubject to pay tythes 39

H.

Hay, tytheable of common right in ſwathes, wind-rows, or cocks, according to cuſtom 39
——— mown to feed deer, ſubject to tythe, unleſs a cuſtom to the contrary - ib.
——— table of compoſition for 175
Hazle, how tytheable 39
Head-lands, whoſe owner reaped, bound, and ſhocked the corn, held diſcharged of tythes 40
——— ſown with corn, held diſcharged of tythes, becauſe fed with ploughed cattle, or mowed and cut for that purpoſe - ib.
Heath-ground, what is ſo conſidered - 12
Hemp and Flax, by 11 & 12 *W.* 3. to pay tythe of 5s. per acre 40
Holly, ſubject to tythe ib.
Honey, tythe ought to be paid in kind - ib.
Hops, in Kent, deemed a great tythe when in orchards or gardens reſolved to belong to the vicar, pay a predial tythe, and regularly, accounted ſmall tythes 40
Horſes, when ſubject to tythe and when not - 41
Houſes, of common right, pay no tythe, but time out of mind a modus has been paid for houſes in lieu of the tythe of lands upon which houſes are built ib.
Houſe-lambs, how tythed ib.

L.

Lambs, deemed a mixed ſmall tythe - 41
——— how compounded for 170
———, houſe. See *Houſe-lambs*
Land, bearing broom, not exempt from tythes, under *St.* 6 *Edw.* 6. - - 12
——— gained from the ſea, not exempt when cultivated ib.
——— *Glebe*. See *Glebe-land*
Lead, exempt from tythe, as being the ſubſtance of the earth 42
Licences for non-reſidence, in what caſes grantable by biſhops 153
——— fees for do. 154
——— reaſons for granting them to be tranſmitted to archbiſhops - 155
——— in what caſes to be void - 156
Lime, exempt from tythe as being of the ſubſtance of the earth - 42
London, method of paying tythes in the ſeveral pariſhes of, with the reſpective ſums paid by each - - 96, 109
Loppings of timber trees, of *twenty years* growth not ſubject to tythe 42
Leaſes, eccleſiaſtical, power of ſpiritual perſons in granting them 79
——— requiſites of, under the ſtatutes - 80
——— of what things may be made 83
——— rents of, how recoverable ib.
——— not binding by common law, unleſs confirmed ib.

Leaſes, under hand and ſeal for three years, are by 32 *H.* 8. good againſt leſſors, their wives, heirs, and ſucceſſors page 83
—— how ſuch leaſes are to be made - ib.
—— how to be made, where a biſhop has two diſtinct manors uſually demiſed together ib.
—— concurrent - ib.
—— reſtrictive, ſtatutes relative to thoſe made by deans, prebends, &c. - ib.
—— bonds and covenants, contrary to 13 & 18 *Eliz.* void 91
—— of parſons void by non-reſidence - 90
—— all charges, other than rents reſerved, ſhall make them void 85
—— in what caſes parſon may demiſe without reſidence ib.
—— none good in reverſion, unleſs cuſtomary, yearly rent reſerved therein - ib.
—— how leſſee may hold on his term by 28 *Hen.* 8. ib.
—— of colleges and hoſpitals 92
—— may be taken by vicars and curates of the impropriate perſonages of their pariſhes 147

M.

Madder, ſubject to tythe of 5*s.* per acre - 42
Maple, ſubject to tythe, though of *twenty* years growth - 43
Maſt, tythe of crabs, maſt, &c. to be paid when gathered, or ſatisfaction made if eaten by ſwine on the ground ib.
Milk, manner of paying tythes of, ib.
—— how compounded for 176
Mills, deemed of two ſorts, viz. corn-mills, or mills for other purpoſes. Corn mills pay tythe, others not, unleſs by cuſtom 44
——, wind-mills, fulling-mills, tin-mills, lead-mills, plate-mills &c. how tytheable - ib.
Modus or cuſtomary payment in lieu of tythes, explanation of it - - page 15
Modus, what makes a good one ib.
—— general maxim of law in which it is determined 22
—— what conſideration given will create one - ib.
—— reaſons why the ſpiritual courts are reſtrained by courts of law from trying one 23
Monaſteries. See *Abbeys*.

N.

Non-reſidence, licences may be granted for, by biſhops in certain caſes - 159
Notification of perſons exempt from penalties for non-reſidence, within what time to be made - - 158
Nurſeries, ſubject to tythe 45

O.

Oak, maſt of, and acorns, how conſidered. See *Maſt*.
—— aſh, and elm, privileged from tythe by ſtat. *ſylva cædua* - - 46
Oats, table of compoſition for 177
Offerings, Eaſter, due of common right, or two-pence per head, unleſs allowed by cuſtom 46
Orchards, if ſown with any kind of grain, tythe is due both for fruit-trees and grain ib.
Ordinary, offences againſt 13 *Eliz.* to be made to him 66
—— if he neglect, any pariſhioner may proceed upon this ſtature - - - ib.
Oſiers, if uſed by owner, for hurdles for his ſheep, not tytheable, otherwiſe if ſold ib.

Parks,

P.

Parks, if modus were a certain conſideration in money for all tythes in ſuch a park, the modus will hold, if ſuch park be afterwards diſparked; but if it had been for deer and herbage, it would have been loſt page 46
Parſon, his eccleſiaſtical definition 1
——— eccleſiaſtical diſtinction between him and a vicar 4
——— or vicar, how to make a leaſe under the ſtatutes, or rectory - - ib.
Parſonage, uſually conſiſts of glebe-lands, tythes, and offerings - - 6
——— may have no glebe but the church-and church-yard ib.
——— in London, has neither glebe nor tythes - ib.
——— in a grant of the glebe, tythes, and offerings, parts of courſe - - ib.
——— having a vicar endowed, not to be deemed a benefice 149
Partridge, not ſubject to tythe as *feræ naturæ* - 46
Paſture, table of compoſition for 278
Peas, if gathered for family uſe, pay no tythes; if for ſale, or to feed ſwine, otherwiſe 47
——— table of compoſition for 278
Pheaſants, not ſubject to tythe 47
Pigeons, not ſubject to tythe ib.
Pigs, how compounded for 280
Potatoes, how compounded for ib.
Poultry, do. do. 282
Prebends, grants by, how to be confirmed. See *Grants*
Preſcription, what it is 17
——— where good with reſpect to tares - 48
——— See *Cuſtom*.
Prohibitions, upon tythes, purchaſe of, how regulated 71

Q.

Quakers, compelled to pay tythes by 7 & 8 *W.* 3. c. 34. 75
Quakers, further remedy given againſt them - 76
——— juſtices empowered to proceed againſt them by diſtreſs and ſale - 77
Quarries, not tytheable, being of the ſubſtance of the earth 50

R.

Rakings, pay no tythes 47
Rape-ſeed, pay tythe uſually at rate per acre - ib.
Rectory. See *Parſonage*
Religious houſes. See *Abbeys*.
Reſidence, non, penalties for
——— abſtract 43 Geo. 3. c. 84. for enforcing reſidence of ſpiritual perſons on their benefices in England - 145
Roots, if grubbed up, not liable to tythe - - 49

S.

Saddle-horſes. See *Horſes*.
Saffron, held to be a predial ſmall tythe - 47
Salt, not tytheable, unleſs by cuſtom - - ib.
Scire Facias, writ of, given by 18 *Edw.* 3. to warn prelates 71
——— extent of this writ ib.
——— its operation ib.
Sheep. See *Agiſtment*
Spiritual perſons, abſtract of 43 *Geo.* 3. c. 84. for amending the laws relative to their holding farms, and for enforcing their reſidence on their benefices 145
——— courts, how they proceed with reſpect to moduſes. 24
——— may take houſes, &c. though not in any city; and where not ſufficient glebe, take farms by conſent of the biſhop 146
——— in what caſes may hold eſtates in property - ib.
——— may buy or ſell cattle or corn for the occupation of farms - - 149

Spiritual persons, in what cases exempted from actions commenced for non-residence 150
——— exempted from penalties of - ib.
——— no penalties for non-residence to be levied against the parson, where recoverable by sequestration of benefice in three years - 152
Straw, given in as a compensation for expences in collecting, &c. in valuing the tythe of barley, oats, peas, and beans 171

T.

Tares, whether green or ripe, a great tythe, unless used to feed cattle - - 48
——— composition for 183
Tile, not tytheable - 48
Timber-trees, above twenty years growth, cut and corded for fuel, subject to tythe, otherwise not 49
Trees, fit for building ships or houses, &c. exempt from tythes ib.
Turf, deemed tythe free, as part of freehold - ib.
Turkies, how tytheable 49
Turnips, do. - ib.
Tythes, what they are - 7
——— how first divided for use of the church - ib.
——— how classed - ib.
——— how divided, as to their value, into great and small 8
——— the above division may be altered by custom - ib.
——— extra parochial, to whom they belong - ib.
——— personal, are regulated by 2 & 3 *Edw.* 6. - ib.
——— and other profits annexed to a rectory on the death of the incumbent, go to successor 9
——— but executor of, the parson shall have the corn sown by the testator in his life-time ib.
——— if parson or vicar sow land, and be deprived, resign, or accept another living, shall devolve upon the successor Page 9
Tythes, shall not be paid by a vicar upon a general endowment for the glebe, unless the endowment contain special words to bind him - - - ib.
——— by prescription may be appendant on an ancient chapel ib.
——— personal, are to be paid by the canon law, where the party communicates - ib.
——— predial, are to be paid to the parson where the land lies ib.
——— general maxims of paying them - - ib.
——— exceptions to the general maxim of paying them ib.
——— of all tytheable articles, to be paid as often as they yield a profit to the owner ib.
——— of extra parochial forest lands, to be paid to the King 10
——— for parks, how payable ib.
——— for barren heath or waste ground - ib.
——— explanation of the modus or customary payment in lieu of - - - 15
——— who are exempt from 13, 18
——— *of agistment*, by whom to be paid - 26
——— general rules for payment of - 27
——— remedy for refusing payment of 31
——— how to be set out 52
——— time and manner of setting them out - ib.
——— what deemed when set out 53
——— on whom the care of, falls when set out - ib.
——— when set out, parson may come by himself or agent to spread and dry them 54
——— penalty inflicted by 2 & 3 *Edw.* 6. c. 13. for intercepting the parson in taking them away - ib.
——— the parson has a right to come on the land and take them away without interruption ib.

—— may be carried by the common way, or any other way the proprietor carried the other nine parts - 54
Tythes, tables of. See *Appendix*.
—— ſeveral remedies for recovering them by common ſtatute and eccleſiaſtical law 56
—— how recoverable in old times - - ib.
—— when recoverable in eccleſiaſtical courts - ib.
—— if the owner of the land ſtop up the way or prevent him in ſpreading, drying, or ſtacking them, this is deemed not a good ſetting them out, and the parſon may have his action for redreſs - 55
—— parſon may break open any gate ſhut to prevent his carrying them off, but muſt commit no riot nor wanton damage ib.
—— remedy againſt the parſon for letting them remain longer than neceſſary after ſet out ib.
—— clergy protected from indictments for purſuing their claims for, in the ſpiritual courts - ib.
—— by ſtat. 32 *Hen.* 8. c. 7. every perſon to pay tythes according to the cuſtom of the pariſh where ſuch tythes ariſe 62
—— ſmall, ſettled by 7 & 8 *W.* 3. c. 6. and proper remedies given for recovering them 75
—— of conſiderable value how to be ſued for, notwithſtanding preceding ſtatutes - 77
—— offences concerning them, to be made by 1 *Eliz.* to the ordinary in London. See *London*

V.

Vicar, eccleſiaſtical diſtinction between him and a parſon 4
—— endowed of ſmall tythes within his pariſh, is not entitled to the ſmall tythes from the glebe-land of his patron ib.
—— how generally endowed 6
—— endowed, where cure of ſouls annexed, always favourably conſtrued - ib.
—— how a clerk muſt be preſented to one, according to eccleſiaſtical law - 4

W.

Waſte ground, what is ſo conſidered - - - - 12
—— lands made tytheable by 2 Edw. 6. c. 13. 50
Wheat, table of compoſition for 184
White-thorn. See *Hazle*, *Holly*, *Willow*, &c.
Willows, growing about a houſe, not tytheable unleſs felled 50
Windmills. See *Mills*.
Wood, growing in nature of an herb, a ſmall tythe - ib.
—— how to be ſet out ib.
Working horſes. See *Horſes*.
Wood, generally paſſes for a ſmall tythe - - 50
—— how diſcharged from tythes 51
—— manner of tything ib.
Wool, deemed a mixed ſmall tythe ib.
—— how collected - ib.

Printed by Rider and Weed, Little-Britain.

EP APF QJt2
The law of tythes,
Stanford Law Library
3 6105 044 402 134